



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/168890

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2015, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on October 14, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner’s FS because he failed to comply with work program requirements in three months.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jeannie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # ) is a resident of Winnebago County.
2. The petitioner is an able-bodied adult without dependents (ABAWD).

3. The petitioner enrolled in the FoodShare (FS) program. On July 8, 2015 the agency sent the petitioner a notice informing her about the FoodShare Employment and Training Program (FSET).
4. On July 23, 2015 the petitioner enrolled in the FSET program. The petitioner was enrolled in the FSET program in July, August, and September. She received FS benefits during these months.
5. In July the petitioner worked 33 hours. She did not complete any hours of career research. The agency granted her an additional 4 hours of good cause time for a total of 37 hours.
6. In August the petitioner worked 32 hours. She completed 5 hours of career research. The agency granted her an additional 4 hours of good cause time. Her total FSET work time in August was 41 hours.
7. In September the petitioner worked 33.5 hours. She did not complete any hours of career research. The agency did not grant her any good cause time.
8. The petitioner received FS benefits in July, August, and September 2015.
9. On September 18, 2015 the agency sent the petitioner a notice stating that her FS benefits would terminate effective October 1, 2015 because she had used three months of time-limited benefits without meeting the work requirement.
10. On September 22, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement.

6.3.2 Non-Exempt ABAWD Participation Requirements

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. *FoodShare Wisconsin Handbook*, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If he does not fulfill the work requirement, he is limited to receiving no more than three months' FS during a three year period. The requirements are stated in the *FSET Handbook*, as follows:

6.3.2.1 Definition of Working for ABAWDs

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

6.3.2.2 ABAWD Work Requirement

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

FSET Handbook, §§ 6.3.2.1 & 6.3.2.2; and see *FoodShare Wisconsin Handbook* at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. *FoodShare Wisconsin Handbook*, §3.17.1.7. The person is limited to three months of FS eligibility in which he is not meeting the 80-hour requirement and is not exempt. *Ibid.*, §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the work requirement for a 30-day period (the person could reapply for FS *after* meeting the requirement for 30 days). *Ibid.*, §3.17.1.11. Among other reasons, as stated in Finding of Fact No. 3, above, a person can be exempt from the program if he is unfit for employment, that is, he is unable to work as evidenced by a statement by a health care professional or social worker. *FoodShare Wisconsin Handbook*, §3.17.1.5.

In July the petitioner worked 37 hours; in August she worked 41 hours; and in September she worked 33.5 hours. Four of the hours logged in July, and four of the hours logged in August were “good cause time” because the petitioner reported that she was too sick to complete her FSET activities. The petitioner’s FSET plan also included career research. During the petitioner’s three months in the program, she completed a total of 5 hours of career research. Her plan was to complete four hours per week. The FSET requirements are not for full time employment, but rather 20 hours per week. The petitioner completed on average less than 10 hours per week. Thus, she failed to meet the FSET work requirement.

At the hearing the petitioner stated that she had depression and other issues that made it difficult for her to meet the FSET requirement. The agency offered to give the petitioner an exemption form to have her doctor complete. The petitioner then indicated that she believed at this point in time she could meet the FSET requirement.

Following the hearing, the petitioner produced a medical record from an urgent care visit on September 11, 2015. During that visit the petitioner complained of a sore throat, cough, and fever. She was released home with additional medications. She also provided another ER record from August 14, 2015 showing

that she went to the ER, was diagnosed with bronchitis, and released home. The agency granted the petitioner 4 hours of good cause time in August. They did not grant her good cause time in September. Had the petitioner previously given the agency the urgent care record, she may have been entitled to good cause time in September. However, there was no evidence that the day she was sick impacted her actual work schedule. In addition, the agency would have had to grant 40 hours of good cause time each month for her to have met the work requirement. Given that she only works part time this amounts to two weeks of missed worked. These were acute conditions. She was never hospitalized. There is no evidence that she followed up with her primary care doctor. Given the medical records she presented, she should have been unable to work for a day or two. Even with these illnesses, she is still not close to meeting her FSET requirement.

Finally, as a point of information to the petitioner about the new FSET requirements, the *FoodShare Wisconsin Handbook* provides for *regaining* FS eligibility as follows:

3.17.1.11 Regaining Eligibility after Exhausting 3 Months of Time-Limited Benefits

There is no limit on how many times an ABAWD may regain eligibility after exhausting three months of TLBs. A new application is required if the ABAWD re-requests FS as an assistance group of one. If an ABAWD is requesting FS on an ongoing case, follow the person add policy to re-establish FS eligibility ([6.1.3.3](#)). ABAWDs who have exhausted three months of TLBs during a 36-month period may regain eligibility by:

1. Meeting the ABAWD work requirement for at least 30 consecutive days prior to the new FS filing date and currently meeting the work requirement, OR verifying that the work requirement will be met within 30 days of the new filing date. The work requirement can be met by:
 - Working a minimum of 80 hours in the 30-day period;
 - Participating in and complying with requirements of an allowable work program, such as Workforce Investment Act (WIA) or a Trade Adjustment Assistance Act program, for at least 80 hours in the 30-day period. FS eligibility is a required prerequisite to FSET enrollment, so an ABAWD cannot regain eligibility through FSET participation after FS closes. Keep in mind, this is only for Non-Exempt ABAWDs who have exhausted their 3 TLBs; or
 - A combination of work and participation in an allowable work program for a minimum of 80 hours in the 30-day period;
2. Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
3. The ABAWD's 36-month period expires.

An ABAWD who has exhausted 3 months of TLBs and is not meeting one of the above requirements at the time of re-application is ineligible for FoodShare. If the ineligible ABAWD is a member of an open FS group, the ABAWD will be counted as a pro-rated deemer. See [4.7.5 Prorated Deeming](#).

The petitioner needs to work, participate in *another* allowable work (NOT FSET) program, or a combination of both for 80 hours in an immediate past month or anticipated in the next future month, with verification. If the petitioner can obtain an exemption in which a medical professional signs a form stating that the petitioner is unable to meet the work requirement due to a disability, then she may regain eligibility immediately.

CONCLUSIONS OF LAW

The agency correctly discontinued the petitioner's FS because he failed to comply with work program requirements in three months.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

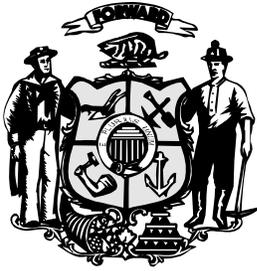
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of October, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 16, 2015.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability