



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/169000

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2015, under Wis. Admin. Code § HA 3.03(4) (*This subprogram no longer exists.), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on October 27, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency properly ended Petitioner’s FS benefits effective October 1, 2015 for using 3 months of time-limited benefits without meeting work requirements.

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: Rachel Petrick
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Racine County.
2. On March 13, 2015, the Petitioner completed a FS renewal.
3. On March 30, 2015, the agency issued a notice of FSET referral to the Petitioner.

4. On March 31, 2015, the agency issued a FSET Initial Appointment notice to the Petitioner informing her of her initial appointment on April 8, 2015. The Petitioner attended the April 8, 2015 appointment.
5. On April 9, 2015, the agency issued the Petitioner's FSET Employment Plan (EP) and advised her to sign and return it by April 22, 2015. The EP included 10.0 hours/week of independent job search activities, 10.0 hours/week of customized skills training with [REDACTED] and 25 hours/week of attendance at [REDACTED]. Specifically with regard to the customized skills training at [REDACTED], the EP states: "Client will continue to enhance skill set and explore career options by completing 10 hrs. of online training through [REDACTED]." The Petitioner signed the EP on April 8, 2015.
6. Petitioner did not complete her work requirements for April or May, 2015.
7. On June 2, 2015, the Petitioner signed an EP that included 10.0 hours/week of independent job search activities, 10.0 hours/week of customized skills training with [REDACTED] and 25 hours/week of attendance at [REDACTED].
8. Petitioner met her work requirements for June, July and August, 2015.
9. On June 20, 2015 and September 2, 2015, the Petitioner signed an EP that included 10.0 hours/week of employment search, 9.0 hours/week of customized skills training with [REDACTED] and 1.0 hours/week of post-secondary education at [REDACTED]. Specifically with regard to the customized skills training at [REDACTED], the EP states: "Client will continue to enhance skill set and explore career options by completing 10 hrs. of online training through [REDACTED]."
10. For the month of September, the Petitioner's transcript from [REDACTED] reports the following activity:

Week One (September 1 – 8, 2015)

Customer Advocacy Communicating to . . .	Completed	9/2/15	Time in Class: 143 minutes
Customer Service	Completed	9/2/15	64 minutes
Internal Customer Svc. Customer Service	Completed	9/4/15	99 minutes
Confrontation	Completed	9/4/15	122 minutes
Customer Advocacy Enhancing the . . .	Completed	9/4/15	139 minutes
Shaping the Direction Of . . .	Completed	9/4/15	88 minutes
Identifying and Managing Customer . . .	Completed	9/4/15	77 minutes
Creating Workbooks	In Progress	9/4/15	38 minutes
Creating and Sustaining A Customer Focused . .	Completed	9/5/15	70 minutes

Customer-focused Interaction	Completed	9/5/15	62 minutes
Developing Customer Focus	Completed	9/5/15	18 minutes
Listening Essentials	Completed	9/6/15	66 minutes

Week Two (September 9 – 16, 2015)

Customer Interactions	Completed	9/9/15	250 minutes
Using Email . . .	Completed	9/14/15	61 minutes

Week Three (September 17 – 25, 2015)

Preparing for Interview	Completed	9/17/15	71 minutes
Social Networking	Completed	9/17/15	82 minutes
Using Your Desktop	In Progress	9/18/15	88 minutes
Intro to Info Security	Completed	9/18/15	79 minutes
Business Grammar Common Usage Errors	Completed	9/18/15	75 minutes
Business Grammar Parts of Speech	Completed	9/18/15	65 minutes
Business Grammar Punctuation	Completed	9/19/15	138 minutes
Business Grammar Sentence Construction	In Progress	9/21/15	26 minutes

The total minutes in class for courses completed by the third week of September was 1,921 (31.9 hours): 16.4 hours in week one; 5.1 hours in week two; and 10.4 hours in week three.

12. Petitioner's hours for her independent job search were 27.5 hours by the third week of September.
13. On September 17, 2015, the agency determined the Petitioner was ineligible for FS benefits due to not meeting work requirements.
14. On September 18, 2015, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would end on October 1, 2015 due to using 3 months of time-limited benefits without meet a work requirement.

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. As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat. §49.79(10), which required 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.

On June 11, 2014 the Department of Health Services (DHS) issued Operations Memo #14-25 which outlined Wisconsin's policy and instruction for applying Time-Limited FoodShare Benefits (TLBs) to ABAWDs. Operations Memo #14-25, available online at <https://www.dhs.wisconsin.gov/dhcaa/memos/14-25amendedv3.pdf>. As explained in that Memo, effective July 1, 2014, FS applicants and members residing in Kenosha, Racine, and Walworth counties were subject to the new eligibility rules which determine if a person is an ABAWD subject to time-limited FS benefits. Id.

During the orientation/enrollment process, a written employment plan (EP) is developed jointly by a participant and his/her case manager. FSET Handbook, § 4.5. ABAWDs who are not exempt from the FSET program must meet the work requirements of the program by engaging in work activities at least 80 hours per month. FSET Handbook, § 4.5.2.1.

An FSET participant must perform the assigned FSET activities as agreed upon in the employment plan, attend and participate in assigned work training and other activities as assigned, attend scheduled appointments related to FSET, and submit attendance information for assigned activities. FSET Handbook, § 6.1.

For most types of assigned activities, countable hours of participation correspond directly to time spent engaged in the activity. FSET Handbook, § 6.5.2. For some education and training activities, a certain amount of study time can also count toward meeting the work requirement. Id. For education and training activities, the FSET Handbook directs the agency to "***count the number of hours the person is in the classroom*** and up to one hour of unsupervised study time for each hour of class time." Id. (emphasis added).

The FSET Handbook requires the agency to determine, by the second Saturday of the month, whether a participant is "reasonably anticipated" to meet work requirements by the end of the month. FSET Handbook, §§ 6.5.3 and 6.5.4.3. This determination should be made for non-exempt ABAWDs in their third time-limited benefit month. Id. If the agency determines that it cannot "reasonably anticipate" the participant will meet work requirements for the month, it must give notice to the participant that eligibility for FS will end at the end of the third time-limited benefit month. FSET Handbook, § 6.5.3.

In this case, the Petitioner does not dispute that she did not meet the work requirements in April and May, 2015 and that she has, therefore, used two time-limited benefit months. The Petitioner disputes the agency's determination that she was not meeting her work requirements for September, 2015.

At hearing, it is the agency's burden to produce evidence to demonstrate that it took the proper action in this case.

The agency representative testified that the Petitioner had completed only 12.5 hours of her [REDACTED] training by September 17, 2015. The agency therefore, determined that it could not reasonably anticipate

that the Petitioner would meet her requirement to complete 10 hours/week (40 hours/month) of skills training. The agency produced the Petitioner's [REDACTED] transcript listing the courses that she registered for, the start date, completion date, time and test score. The transcript also indicates whether a course is completed or "in progress." The agency argues that the Petitioner's EP requires her to complete a [REDACTED] course before the hours count toward her work requirement. The Petitioner argues that the EP only requires her to complete 10 hours and says nothing about counting only hours for completed courses. She testified that, prior to September, 2015, her case worker counted her class hours and never mentioned that she was required to complete a course before the time in class was counted.

I find that the agency's argument is without merit. The Petitioner's EP states only that she must complete an estimated 10 hours per week of online training. It states nothing about completing a course before class time will count toward her requirement. Further, the FSET Handbook is clear that the number of hours in class and the time spent engaged in an activity is what the agency must assess in determining whether a participant is meeting work requirements.

In this case, the agency's own evidence supports the Petitioner's argument that she was participating in the required number of hours and that the agency should have reasonably anticipated that she would meet her work requirements in September. By the end of week two, the Petitioner had participated in 21.5 hours of [REDACTED] training. I note that the agency did not present any detailed evidence to demonstrate or explain the [REDACTED] transcript. It provided no explanation of how it arrived at a total of 12.5 hours of [REDACTED] training through the third week of September and I was unable to replicate that result based on the agency's evidence.

Based on the evidence, I conclude that the agency should not have made a determination that it could not "reasonably anticipate" the Petitioner would meet the work requirements for September, 2015. Because the Petitioner reasonably relied on the agency determination, she did not engage in work requirements for the last week of September. I find the Petitioner had good cause not to participate for that week based on the agency determination that she could not meet the requirements. On the totality of the evidence, I conclude that the agency should not have counted September, 2015 as the Petitioner's third time-limited benefit month and should not have terminated her from the FS program effective October 1, 2015.

CONCLUSIONS OF LAW

The agency should not have counted September, 2015 as the Petitioner's third time-limited benefit month and should not have terminated her from the FS program effective October 1, 2015.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind its determination that the Petitioner did not meet the work requirements for September, 2015, to rescind its determination that the Petitioner was not eligible for FS benefits based on failure to meet work requirements for September, 2015 and to restore the Petitioner's FS benefits effective October 1, 2015. The agency must determine if the Petitioner will be referred again to the FSET program and take the steps necessary to re-enroll her. These actions shall be completed within 10 days of the date of this decision.

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 17th day of November, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 17, 2015.

Kenosha County Human Service Department
Division of Health Care Access and Accountability