



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 06, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency has met its burden to show that Petitioner’s FoodShare benefits were correctly discontinued for failing to meet Able-Bodied Adult without Dependent (ABAWD) requirements.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: [REDACTED]  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 30, 2015, the Petitioner submitted a renewal for FS benefits. On July 1, 2015, the agency issued a FS Employment and Training (FSET) Program Referral to the Petitioner, and he



was enrolled on July 14, 2015. Respondent notified the Petitioner that, in order to receive FS benefits, he must participate in FSET. It further notified him that if he did not participate, he would receive FS benefits for 3 months in a 36 month period. In addition, it notified him that his begin month for time-limited FS benefits was July, 2015. The notice also advised the Petitioner to submit a Proof of Work Requirement Exemption if he believed he meets a work requirement exemption.

3. On September 18, 2015, the agency issued a Notice of Decision to the Petitioner informing him that, effective October 1, 2015, he would no longer be enrolled in FS due to using three months of time-limited benefits without meeting a work requirement.
4. On October 7, 2015, the agency issued a notice advising the Petitioner that his enrollment in FSET ended effective October 6, 2015.
5. The petitioner supplied the respondent with proof of enrollment in post-high school (GED) classes. The respondent then reinstated petitioner's benefits for October – December, 2015. The respondent later rescinded this reinstatement after determining that petitioner had been incorrectly reinstated as a high school student. Petitioner's FS again closed effective December 31, 2015.
6. Petitioner filed a request for fair hearing on October 7, 2015.

**DISCUSSION**

Effective July 1, 2014, Wisconsin began the Able-Bodied Adults without Dependents (ABAWD) policy in Kenosha, Racine and Walworth counties. FoodShare Wisconsin Handbook (FSH) §3.17.1.2. This was implemented statewide as of April 1, 2015. Id.

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. FSH §3.17.1.1. ABAWDs who are not exempt and who do not meet the work requirement are only allowed to receive 3 full months of time-limited benefits in a 36-month period. Id.

A person is considered an ABAWD, if that person is:

- ...
- 18 to 49 years in age\*;
- Able to work;
- Not residing in a household with a child under age 18 (regardless of the individual's relationship to the child, whether the child is included in the individual's FS assistance group, or the child's FS eligibility status); and
- Not pregnant.
- ...

FSH §3.17.1.4.

An ABAWD may be exempt from work requirements if the person:

1. Is determined unfit for employment, which includes someone who is:
  - a. Receiving temporary or permanent disability benefits from the government or a private source;
  - b. Mentally or physically unable to work, as determined by the IM agency;
  - c. Verified as unable to work by a statement from a health care professional or social worker;

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2. Is responsible for the care of a child under age 6 or caring for an incapacitated person, either of which live outside the home;
  3. Is receiving Unemployment Compensation (UC), or has applied for UC and is complying with UC work requirements;
  4. Is regularly participating in an alcohol or other drug addiction (AODA) treatment or rehabilitation program;
  5. Is a student of higher education and is otherwise eligible for FS (3.15.1);
  6. Is a full-time high school student age 18 or over;
  7. Is receiving Transitional FS benefits; or
  8. Is meeting the ABAWD work requirement.

FSH §3.17.1.5.

If not exempt from work requirements each FoodShare household member must register for work at the time of application and review. FSH, §3.16.1.4. As just noted, a person may meet the work requirement by participating in the FoodShare Employment and Training (FSET) program. FSH, §3.17.1.17.

Verification of exempt ABAWD status is necessary in order to lift the three month time limit on FS benefits. Exempt ABAWD status may be verified in any of the following ways:

- Agency form
- Statement from healthcare, social worker, or AODA professional
- Employer form/paystub/taxes/EVF
- Upon receipt by using data exchanges
- By using information known to the agency
  - This includes in-person agency verification of a visibly obvious ABAWD status or exemption that the member has reported, such as pregnancy or inability to work due to a temporary or permanent health condition.
- Collateral contact, or
- Other acceptable written statement.

FSET Handbook, § 6.2.2.

The verification policy and rules for FSET are the same as for verifying eligibility for FS. See FSET Handbook, § 6.2.2; FS Handbook, § 3.17.1.6 and DHS Operations Memos 14-25 and 14-55. Agency requests for verification must be made in writing. Verbal requests are not acceptable. Workers are required to give the customer notice regarding required verification, when it is due to the agency, and the consequences of not verifying timely. FS Handbook, § 1.2.1.2; see also 7 CFR 273.2(c)(5).

If an individual fails to provide adequate and timely verification as requested, the agency may take negative action including termination of the individual's benefits. FS Handbook, §1.2.1.2. A notice of adverse or negative action, regarding the termination or reduction of benefits must be mailed at least 10 days before the effective date of the action. FS Handbook, § 6.3.1; see also 7 CFR 273.13.

[REDACTED]

In this case, the issue is whether petitioner's enrollment in GED classes constitutes an Exempt ABAWD status for petitioner, either as a full-time high school student or a student of higher education who is otherwise eligible for FS (3.15.1). I first conclude that GED courses do not constitute "higher education," as the GED course work is intended to achieve the equivalent of a high school diploma. Whether or not GED courses would qualify petitioner for exempt ABAWD status is less clear. The record does not establish the number of hours of classes that petitioner is taking, which precludes me from determining whether he would qualify as a full time student. A full time high school student is routinely in classes for 6-7 hours per day. The petitioner has not provided any evidence to establish that he is attending such a level of courses. As such, I must dismiss the petitioner's appeal for failing to establish that he would qualify as a full time high school student.

### CONCLUSIONS OF LAW

The agency properly discontinued the petitioner's FS benefits.

**THEREFORE, it is**

**ORDERED**

That petitioner's appeal is hereby 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 Madison,  
Wisconsin, this 22nd day of December, 2015

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\sPeter McCombs  
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 December 22, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability