



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/169351

PRELIMINARY RECITALS

Pursuant to a petition filed October 12, 2015, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 03, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly ended the Petitioner’s benefits effective September 1, 2015.

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: Pang Thao-Xiong, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The Petitioner completed a FoodShare renewal on May 29, 2015. (Exhibit 2, pg. 6)

3. On June 1, 2015, Milwaukee Enrollment Services (the agency) sent the Petitioner a notice indicating that he had been referred to the FSET program and that his time limited benefits began June 2015. The notice further advised the Petitioner that he needed to be working or taking part in a work program, such as FSET, 80 hours per month, unless he provided proof that he was mentally or physically unable to work. (Exhibit 2, pgs. 16 and 17)
4. The Petitioner enrolled in the FSET program on July 2, 2015. (Exhibit 3, pg. 23)
5. Petitioner did not complete the required 80 hours per month of work program participation, because he was told that he would qualify for an exemption, if he obtained the appropriate paper work. (Testimony of the Petitioner)
6. On September 22, 2015, the Petitioner had his physician complete a WME Medical Examination and Capacity form, which indicated that the Petitioner was able to work, but with certain limitations, such as lifting no more than 20 pounds on an occasional basis, lifting and carrying no more than 10 pounds on a frequent basis, and standing and walking for at least two hours. (Testimony of Petitioner; Exhibit 2, pgs. 24-25)
7. The Petitioner has arthritis in his right, big toe and edema in his legs. (Id.)
8. On August 19, 2015, the agency sent the Petitioner a notice, advising him that his FoodShare benefits would be ending, effective September 1, 2015, because he used up his three months of time limited benefits. (Exhibit 2, pg. 20)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 12, 2015. (Exhibit 1)

DISCUSSION

Effective July 1, 2014, the Department of Health services implemented a new policy limiting benefits that childless adults in Kenosha, Racine and Walworth counties may receive. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2* This policy is referred to as the Able Bodied Adults without Dependents (ABAWD) policy and was implemented statewide effective 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 a Non-ABAWD, if that person is:

1. Under 18 or age 50 and older,
2. Unable to work,
3. Residing in a FoodShare household with a child under age 18, or
4. Pregnant

FSH §3.17.1.4

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

1. Determined unfit for employment which includes:
 - a. Receiving temporary or permanent disability benefits
 - 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 a social worker.
2. Receiving Unemployment Compensation, or has applied for Unemployment Compensation and is complying with those work requirements;
3. Regularly participating in an alcohol or other drug addiction treatment or rehabilitation program; or
4. A student of higher education who is otherwise eligible for FoodShare (see section 3.15.1)
5. A high school student 18 years of age or older, attending high school at least half time;
6. A primary caregiver of a dependent child under age 6 or an incapacitated person;
7. Receiving Transitional FS benefits; or
8. Meeting the ABAWD work requirement.

FSH §3.17.1.4

An ABAWD meets the ABAWD work requirement if one of the following applies:

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

FSH, §13.17.1.7.

In the case at hand, the Petitioner argues that he is physically unable to work and therefore, meets an exemption.

In the alternative, the Petitioner argues that good cause should be found for his non-compliance with the ABAWD work requirement, because he relied upon statements/assurances of an agency worker that he would meet an exemption from the work requirement.

The Petitioner's first argument, that he is physically unable to work, is unsupported by the record. On the contrary, his physician indicated that he is able to work, but with some minor limitations.

The Petitioner's second argument is also unsupported by the record. First, there is no documentation showing that anyone from the agency told the Petitioner that he was exempt from the ABAWD work requirement. There are no case comments between May 29, 2015 and September 14, 2015. (See Exhibit 2, pg. 6) There is nothing in the PIN Comments, indicating that anyone from FSET assured the Petitioner that he was exempt from the work requirement (Exhibit 3, pg. 20-24)

Second, under section 6.6.1 of the *FoodShare Employment and Training Handbook (Release 15-01)*, it states, "Good cause may be granted for temporary circumstances beyond the ABAWD's control." See also *Ops Memo 14-27 – Amended 5/18/15*.

The Petitioner had not obtained medical documentation verifying an inability to work until late September 2015, yet he did not comply with the ABAWD requirements. As such, even if an agency worker told him he might be exempt, his reliance upon those statements was not reasonable. Further, there is no evidence

that factors beyond the Petitioner's control prevented him from sitting at a computer and conducting a job search. Indeed, at the hearing the Petitioner conceded that he could work a desk job, and so, could conduct an on-line job search. The decision to not sit at a computer and conduct a work search was a conscious choice made by the Petitioner. Accordingly, the Petitioner did not have good cause for his failure to comply with the ABAWD requirements in June, July and August 2015. Thus, he used up his time limited benefits and agency correctly closed his FoodShare benefits.

Petitioner should note that he can regain eligibility, if he does obtain employment or sign-up for an approved job training program, and works/participates 80 hours a month.

CONCLUSIONS OF LAW

The agency correctly ended the Petitioner's benefits effective September 1, 2015.

THEREFORE, it is

ORDERED

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.

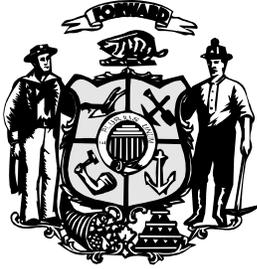
APPEAL TO COURT

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 4th day of December, 2015

\sMayumi M. Ishii
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 4, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability