



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FWP/169742

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on December 08, 2015.

The issue for determination is whether the agency met its burden to show that it correctly discontinued petitioner's FS for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements effective November 1, 2015.

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: Ken Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Washington County.

2. On July 13, 2015 the agency issued a FSET referral letter to petitioner. See Exhibit 1.
3. On July 14, 2015 the agency issued a letter to petitioner entitled "Action Required: FSET Initial Appointment Scheduled". The petitioner was scheduled for July 22, 2015 for the FSET appointment. Petitioner failed to make this appointment.
4. On July 23, 2015 the agency issued a letter to petitioner entitled "Action Required: FSET Initial Appointment Scheduled". The petitioner was scheduled for July 31, 2015 for the FSET appointment. Petitioner failed to make this appointment.
5. On August 4, 2015 the agency issued a letter to petitioner entitled "Action Required: FSET Initial Appointment Scheduled". The petitioner was scheduled for August 12, 2015 for the FSET appointment. Petitioner failed to make this appointment.
6. On August 14, 2015 the agency issued a letter to petitioner entitled "Action Required: FSET Initial Appointment Scheduled". The petitioner was scheduled for August 24, 2015 for the FSET appointment. Petitioner failed to make this appointment.
7. On October 19, 2015 the agency issued a notice of decision to petitioner stating that his FS would end November 1, 2015 because he had used 3 months of time limited benefits (TLBs) without meeting a work requirement during those 3 months.

### 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.

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 (FS) benefits. See *FS Handbook* §3.17.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. 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 (TLBs) in a 36-month period. *Id.*

Non-ABAWDs are *not* subject to time-limited FS benefits (TLBs). The agency defines non-ABAWDs as:

**NON-ABAWD:** A FoodShare applicant or member is determined a non-ABAWD if he or she meets any one of the following criteria, as determined by the IM agency:

- Under age 18\* or age 50\*\* and older;
- Unable to work;
- Residing in a FoodShare household with a child under age 18\*\*\*; or
- Pregnant.

\*Age 18: ABAWD status applies the month following the month the FS recipient or applicant turns age 18.

\*\*Age 50: ABAWD status is lost the first day of the month an ABAWD turns age 50.

\*\*\* Individuals who reside with and are included in the same food unit as a child under age 18 are non-ABAWDs, even if that child is ineligible for FoodShare. See section [3.3.1.1](#) for food unit requirements).

Non-ABAWDs are not subject to time-limited FS benefits (TLBs).

**Note:** Individuals who are coded as out of the home, including children placed in foster care and out of home tax dependents and co-filers, do not make an individual a non-ABAWD.

See *FS Handbook*, §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;
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.

See *FS Handbook*, §3.17.1.5.

An ABAWD meets the ABAWD work requirement by doing one of the following:

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.

*FS Handbook*, §3.17.1.7.

Petitioner testified that he never received the written notices that were mailed to him, except for the August 4, 2015 letter that scheduled him for his third FSET appointment on August 12, 2015. Petitioner stated that he went to the agency on August 13 and talked to someone about getting work. He stated the person told him there was no work for him. He testified he confused Workforce Development with the FSET program and he was not trying to do anything intentional.

The agency representatives testified about the appointment notices that were mailed to petitioner's address of record. There was no mail returned as undeliverable to the agency. The agency did what it

was supposed to do – mail his notices to his address of record on file with the agency. The agency also described leaving voicemail messages for petitioner in July and August in attempts to connect and further explain the FSET requirements. Petitioner testified that he does not check his voicemail messages so he did not receive them. The problem is that he is the person responsible for providing his address of record and telephone number to the agency, which he did, and on which the agency relied and mailed his notices and attempted further contact by phone. If he has difficulty receiving mail at his own address of record or refuses to check his voicemails, the fault lies with him for using that address as his preferred mailing address and using a phone with a voicemail he does not retrieve. Further, I cannot find that showing up a day after the scheduled appointment of August 12 and asking ‘someone’ at Workforce Development about ‘work’ shows his attempts to participate. Even if I believe he only received the August 4 notice, that notice was clear that he had an *FSET* appointment and that if he could not make the appointment, he was required to contact his FSET worker to reschedule. A number was provided for him to call his FSET worker. That did not occur either.

Petitioner failed to meet the work requirement, whether it be through FSET or otherwise, and is only allowed to receive 3 full months of TLBs, as he did in August, September, and October, 2015. Accordingly, I must find that he has exhausted his TLBs and the agency acted correctly in terminating his FS on that basis.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency met its burden to show that it correctly discontinued petitioner’s FS for failing to meet ABAWD work requirements effective November 1, 2015.

**THEREFORE, it is**

**ORDERED**

The petition for review 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 Milwaukee,  
Wisconsin, this 14th day of December, 2015

---

\sKelly Cochrane  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 14, 2015.

Washington County Department of Social Services  
Division of Health Care Access and Accountability