



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FWP - 175303

PRELIMINARY RECITALS

Pursuant to a petition filed on July 4, 2016, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on August 31, 2016, by telephone.

The issue for determination is whether the department correctly discontinued the petitioner's FS due to his failure to meet the Able-Bodied Adult without Dependents (ABAWD) work requirement.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



By: [Redacted]

Respondent:

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

By: [Redacted]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.

2. On March 4, 2016, the department received an online renewal via ACCESS regarding the petitioner's FS case. (Exhibit 3, p.1., CARES Case Comment dated 3/4/2016).
3. On March 7, 2016, Ms. [REDACTED] in her capacity as authorized representative for the petitioner, called the agency and completed the renewal process via telephone. During that process, the issue of "ABAWD" exemptions was not discussed. (Testimony of [REDACTED]; Exhibit 3, p. 1, CARES Case Comment dated 3/7/2016.)
4. On April 18, 2016, the department mailed a "FoodShare Employment and Training Program Referral" to the petitioner. This notice advised him that, at his request, he had been referred to the FoodShare Employment and Training (FSET) Program. It also indicated that he was subject to "Time Limited FoodShare" and that as a result he would only receive three months of FoodShare benefits in a 36 month period unless he either satisfied a work requirement or met an exemption. The notice included a form entitled, "Proof of Work Requirement Exemption" and instructions on properly completing that form.
5. The local agency mailed petitioner four letters during April and May of 2016 entitled "FSET Initial Appointment Scheduled". He did not appear for any of those appointments. Those letters did not include any information regarding exemptions from the work requirement.
6. On May 16, 2016, the local agency mailed the petitioner a notice entitled, "Important Information about Your Time-Limited FoodShare Benefits." That notice stated that he was not meeting the work requirement, that he had already used one of his three time-limited FoodShare benefits months, and that if he did not either begin meeting the work requirement or satisfy an exemption, he would exhaust his eligibility and his FoodShare benefits would end.
7. On May 19, 2016, petitioner's authorized representative, [REDACTED], faxed the following documents to the Milwaukee Document Processing Unit (MDPU): 1. a written, signed statement verifying that the petitioner cares for her and that she has a disability; 2. a copy of a letter from the Social Security Administration confirming her receipt of disability benefits; and 3. a completed "Proof of Work Requirement Exemption." The MDPU received this fax but has, to date, not processed or acted upon it.
8. On June 17, 2016, the department mailed a notice to the petitioner advising that his FS would be discontinued effective July 1, 2016 because he had "used 3 months of time-limited benefits without meeting a work requirement during those 3 months."
9. Petitioner received FS benefits for April, May, and June of 2016.

### DISCUSSION

Wis. Stat. §49.79(10) authorizes the department to require an able-bodied adult without dependents who is participating in the FoodShare (FS) program to fulfill certain work requirements and further provides that the department may limit eligibility to no more than 3 months during a 3-year period if those individuals fail to satisfy the work requirements. And, effective April 1, 2015, the department implemented an able bodied adult without dependents work program requirement statewide. See *FoodShare Handbook* §3.17.1.2. This requirement provides that an able-bodied adult without dependents must either satisfy specified work requirements **or** verify that s/he qualifies for an exemption in order to receive more than three months of FS benefits in a 36 month period (i.e., "time limited benefits"). See *FoodShare Handbook* §3.17.1.3. An able-bodied adult without dependents may be exempt from work requirements if s/he is a "primary caregiver of a dependent child under age 6 or an incapacitated person." *FoodShare Handbook* §3.17.1.5. However, an individual seeking such an exemption must provide verification. Able bodied adults without dependents are not subject to [time-limited benefits of 3 months] during months in which they have a *verified exemption*. See *FoodShare Handbook* §3.17.1.5 and 3.17.1.6.

The petitioner's representative established that on May 19, 2016 she submitted verification to the county agency both of her disability and of the fact that the petitioner provides care for her. The county agency acknowledged that it had received that verification, that the verification was sufficient to qualify the petitioner for an exemption to the ABAWD work requirement effective May 1, 2016, and that petitioner was therefore eligible to have his FoodShare case reopened retroactive to July 1, 2016, which was the date that his FoodShare eligibility had been previously terminated.

The sole issue in dispute is whether the county can properly count the benefits petitioner received for April 2016 towards petitioner's three months of "time limited benefits." The county argues that because petitioner did not report and verify the exemption until May 2016, the exemption cannot be applied until May 2016, and that April 2016 therefore counts as one of the three months of benefits that non-exempt ABAWDs may receive in a 36 month period. The practical impact of the county agency's position is this: if petitioner stops caring for Ms. [REDACTED] during the 36 month period between April 2016 and March 2019 and does not meet any other exemption to the ABAWD work requirement at that time, he would be eligible for two rather than three additional months of benefits.

Petitioner argued that the county agency should be precluded from counting April of 2016 as one of the three time limited benefit months. Petitioner pointed to an example included in an operations memo issued by the department (i.e., Operations Memo 14-25) to support her position. The language cited by petitioner's representative reads as follows:

Libby reported on October 25, 2014 that her roommate's child moved out of the home August 10, 2014. Libby is not meeting a work requirement and does not have an exemption. Libby's first TLB is issued for December, with a second TLB issued for January. On January 5, 2015, Libby reports and verifies that her roommate's child moved back into the home on December 21, 2014. Libby's status changes to non-ABAWD effective January 1, 2015, the month the change was reported and verified. However, that operations memo includes

Petitioner's argument is not persuasive. In the cited example, as in petitioner's case, the exemption was applied as of the month the circumstances constituting an exemption were both reported AND verified. This is consistent with the department's policy regarding verification of exempt status for ABAWDs which provides: "As long as an exemption exists for part of a month, the member is exempt for the entire month. *An exemption will not be applied until it is verified, so an ABAWD with a pending exemption will receive [time limited benefits] until the verification is received*" [Emphasis added.] FoodShare Handbook§ 3.17.1.6.

Although petitioner's representative credibly testified and effectively rebutted the county's contention that it had inquired about petitioner's exempt status during his review in March of 2016, the county did mail petitioner a notice in April of 2016 alerting him to the existence of work requirement exemptions and instructing him how to claim an exemption. Petitioner did not assert and there is no evidence in the record to indicate that petitioner contacted or attempted to contact the county prior to May 19, 2016 to report that he was providing care for an incapacitated individual and should therefore be exempt from the ABAWD work requirement. Under these circumstances, the county may count the benefits petitioner received for April of 2016 as one of three "time limited benefit" months during the period of April 2016 through March of 2019.

**CONCLUSIONS OF LAW**

1. FS benefits petitioner received for the month of April of 2016 may be counted as one of his three “time limited benefit” months during the 36 month period between April of 2016 and March of 2019.
2. Petitioner is exempt from the ABAWD work requirement as of May of 2016 and entitled to have his FS case reopened as of July 1, 2016.

**THEREFORE, it is****ORDERED**

The petition is remanded to the department with instructions to reopen the petitioner’s FoodShare case as of July 1, 2016 and issue any past due benefits. The department shall take these actions within ten days of the date of this decision. In all other aspects, 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, **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 9th day of September, 2016

\s \_\_\_\_\_  
Teresa A. Perez  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on September 9, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability