



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/144628

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 2012, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Walworth County Dept. of Human Services to discontinue FoodShare benefits (FS), a hearing was held on December 4, 2012, by telephone. A hearing set for November 20, 2012 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner is an ineligible student.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Mia Anderson-Inman
Walworth County Dept. of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. Petitioner received FS as a single person until the county action. Although she was a full-time student she was employed 20 hours per week.
3. In September petitioner applied for a different assistance program. While processing that application petitioner's worker found that petitioner no longer was working 20 hours per week.

4. By a notice dated October 15, 2012, the county informed petitioner that FS would be discontinued effective November 1, 2012 because she was an ineligible student.

DISCUSSION

A person who is enrolled at least half time in higher education is ineligible for FS unless he meets a specific exemption criterion. 7 C.F.R. §273.5(a); FS Handbook, Appendix 3.15.1. The exemption criteria are found at 7 C.F.R. §273.5(b). A student in higher education can be exempt if he is:

- (1) Under age 18 or over age 49;
- (2) Physically or mentally unfit for gainful employment;
- (3) Receiving Aid to Families with Dependent Children (AFDC);
- (4) Enrolled as a result of participation in the AFDC work program or its successor;
- (5) Employed a minimum of 20 hours per week, or if self-employed, receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;
- (6) Participating in a state or federally financed work study program during the school year;
- (7) Participating in on-the-job training;
- (8) Responsible for the care of a dependent household member under age 6;
- (9) Responsible for a dependent household member between 6 and 12 if child care is unavailable;
- (10) A single parent responsible for a dependent child under age 12.
- (11) Assigned or placed in the school by or in compliance with a work program, including the Food Stamp Employment and Training (FSET) Program.

See also the FS Handbook, App. 3.15.1. The Handbook provisions differ from the federal regulation in that Wisconsin Works (W-2) eligibility replaces AFDC as described in no. 3 above, there is an additional exemption for a person placed in school through the Workforce Investment Act, and there is an additional exemption for a student “enrolled in an educational program that is designed to be completed in 2 years or less and obtaining certification or a diploma from the program will lead to employment that is in demand.”

Petitioner formerly met exemption number (5). However, once the work hours reduced to below 20 hours per week, the exemption also ended. Petitioner testified that she has virtually no money for food without the FS, but there is no exception in the rules based upon need. I thus must conclude that she is ineligible for FS.

CONCLUSIONS OF LAW

The county correctly closed FS for petitioner because she is an ineligible student.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of December, 2012

\sBrian C. Schneider
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 7, 2012.

Walworth County Department of Human Services
Division of Health Care Access and Accountability