



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/145223

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 8, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Green Lake County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 2, 2013, at Green Lake, Wisconsin.

The issue for determination is determination is whether the county agency correctly discontinued the petitioner's FS effective December 1, 2012. More specifically, the question is whether the petitioner was ineligible for FS due to her status as a post-secondary student.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Adam Spitler, ES Worker  
Green Lake County Department of Human Services  
Human Services Ctr  
571 County Road A  
Green Lake, WI 54941

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]), age 49, is a resident of Green Lake County.

2. The petitioner has been a recipient of FS for at least several months prior to December 2012. In late October 2012, the county agency verified that the petitioner was a full-time student at [REDACTED] a post-secondary technical school. [REDACTED] is an institution of higher education. On November 5, 2012, the agency issued written notice to the petitioner advising that her FS would be discontinued effective December 1, 2012, due to her status as a full-time student. The petitioner timely appealed, and aid has been ordered continued pending the issuance of a hearing decision.
3. The petitioner is not currently employed at least 20 hours weekly.
4. The petitioner is neither responsible for the care of a dependent household member under the age of thirteen, nor receiving W-2 (Temporary Assistance to Needy Families) payments. She is not an FSET participant.
5. The petitioner is receiving her education with the approval of the WIA. There is no evidence in this record that the agency asked the petitioner to verify her WIA participation, so the petitioner did not fail to timely verify that participation. Also, she testified at hearing that the Office Assistant certificate program in which she is enrolled is a one-year program. The transcript that she supplied as a hearing exhibit says that this is a “one year technical diploma.”
6. WIA is the Workforce Investment Act, which replaced the Job Training Partnership Act of 1974, 29 U.S.C. 1501, *et seq.*

### DISCUSSION

As a general proposition, the federal FS rules declare that a person aged 18 to 49, who is enrolled in an institution of higher education, is ineligible to receive FS. This general prohibition is stated in 7 C.F.R. §273.5(a), below:

#### **§273.5 Students**

- (a) *Applicability.* **An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section .** An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum ...
- (b) *Student Exemptions.* **To be eligible for the program, a student** as defined in paragraph (a) of the section **must meet at least one of the following criteria.**
  - (1) Be age 17 or younger or age 50 or older;
  - (2) Be physically or mentally unfit;
  - (3) Be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;
  - (4) Be enrolled as a result of participation in the Job Opportunities & Basic Skills program under Title IV ...
  - (5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;
  - (6) Be participating in a State or federally financed work study program during the regular school year. ...
  - (7) Be participating in an on-the- job training program. ...

(8) Be responsible for the care of a dependent household member under the age of 6;

(9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available ...

(10) Be a single parent enrolled in an institution of higher education on a full-time basis and be responsible for the care of a dependent child under age 12. ...

(11) *Be assigned ... an institution of higher education through* or in compliance with the requirements of *one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section.* [ *e.g.*, a program under the Job Training Partnership Act of 1974].

( *emphasis added*)

7 C.F.R. §273.5(a),(b) (January, 2005). See in accord, the Wisconsin policy authority, *FS Wisconsin Handbook*, 3.15, item #8, at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> .

The agency thought that the petitioner became ineligible for FS because she was enrolled at least half-time at ██████. She is age 49, and hence not exempt from the bar against students receiving FS. However, she *does* fit within at least one exception at (b)(11) above, for students working through WIA. The Administrative Law Judge confirmed the WIA participation with the petitioner's consent shortly after hearing through Ms. Pat Micka, Employment & Training Coordinator, 315 Algoma Blvd., Oshkosh WI, (920) 232-6221. The Administrative Law Judge also reviewed the CARES Client Correspondence History database to determine whether the agency had made any written request to the client in 2012 to verify her WIA participation; no such verification request was found, so the petitioner did not fail to verify her status. Thus, discontinuance of her FS case was incorrect.

### CONCLUSIONS OF LAW

1. The county agency incorrectly discontinued the petitioner's FS effective December 1, 2012, because although the petitioner was enrolled at least half-time in an institution of higher education, she *did* fit into an exemption at 7 C.F.R. §273.5(b) at that time.

**THEREFORE, it is**

**ORDERED**

That the petition is *remanded* to the county agency with instructions to reopen the petitioner's FS effective December 1, 2012, within 10 days of the date of this Decision.

### **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 January, 2013

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\sNancy J. Gagnon  
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 January 8, 2013.

Green Lake County Department of Human Services  
Division of Health Care Access and Accountability