



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147178

PRELIMINARY RECITALS

Pursuant to a petition filed February 05, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 11, 2013, at Stevens Point, Wisconsin.

The issue for determination is whether the Department erred in its termination of FoodShare ("FS") benefits effective 2/1/13 because petitioner is a full-time student.

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
Madison, Wisconsin 53703

By: Lori Yenter

Portage County Department of Human Services
817 Whiting Avenue
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. He is a full time student.
3. He received FS from at least February 2012 until February 1 2013.

4. The Department terminated FS on February 1, 2013 because it determined petitioner is a full time student.
5. Petitioner filed a timely appeal.

DISCUSSION

The Department denied the petitioner's FS application due to the petitioner's status as a student in an institution of higher education. 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., §236 program under the Trade Act of 1974].

(emphasis added)

7 C.F.R. §273.5(a),(b).

The Wisconsin policy authority is found at FS *Wisconsin Handbook*, 3.15.1 (online at <http://www.emhandbooks.wi.gov/fsh/>):

3.15.1 Student Eligibility

7 CFR 273.5

An institution of higher education requires a HS diploma or equivalency certificate for enrollment, or is a regular college or university degree program that does not require a high school degree as a condition of enrollment. It does not include any adult basic education program. Higher education institution examples are business, vocational, trade and technical schools, colleges, and universities.

Anyone, age 18-49, enrolled half time or more, in an institution of higher education is ineligible, unless s/he meets one of the following criteria:

* * *

- 10. Physically or mentally unfit for gainful employment. Verify the claim, if it's not clear. Receipt of temporary or permanent disability benefits, a statement from a physician, or certified psychologist is appropriate verification.

At hearing, the petitioner argued that he is disabled and produced a letter from a physician. That letter was not provided as an exhibit and it not considered as part of the record. Petitioner admitted that he had not provided such documentation prior to the date of the hearing. Given that, it may be that this letter meets the exception above. But, the Department could not have found him eligible based on this exception because it had not been provided to the Department. The Department did not err in its termination.

Petitioner may re-apply based on the unfitness exception at any time.

CONCLUSIONS OF LAW

The Department did not err in its termination of FS benefits effective 2/1/13 because petitioner was a full time student and had not established that he fit within any exception.

THEREFORE, it is

ORDERED

That this appeal is 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 28th day of March, 2013

\sJohn P. Tedesco
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 March 28, 2013.

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