



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147797

PRELIMINARY RECITALS

Pursuant to a petition filed March 02, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 22, 2013, at Madison, Wisconsin. A hearing set for April 2, 2013, was rescheduled at the petitioner's request.

The issue for determination is whether the department correctly reduced the petitioner's FS effective January 1, 2013.

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: Joanne Jaehnke, ES Supr.

Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. The petitioner has an ongoing FS case. Her December 2012 allotment was \$367 for a household of two persons (self and child). On December 13, 2012, the Department issued written notice to the petitioner advising that her FS case would be discontinued effective January 1, 2013, for failure to provide requested income verification.
3. The verification was subsequently provided (January 2), and on January 9, 2013, the Department issued an updated notice. That notice advised that the household's FS allotment would be \$200 monthly from February 2013 forward and \$193 for January (prorated from January 2).
4. In calculating the allotments for January 2013 forward, the Department decreased the household size from two persons to one person. It did this because the petitioner is a full-time student who fits none of the exceptions for receiving FS. The petitioner has not established that she fits any of those exceptions. The remaining person in this FS household of one is the petitioner's child. The other factors in the FS calculation were that the child's gross earnings of \$81 weekly, the child's receipt of \$45 monthly from another person, and the petitioner's Unemployment Compensation of \$53.75 monthly. The standard utility deduction of \$442 and the \$546 rent cost were considered in the excess shelter cost sub-calculation.

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., §236 program under the Trade Act of 1974].

(emphasis added)

7 C.F.R. §273.5(a),(b). See in accord, the Wisconsin policy authority, *FS Wisconsin Handbook*, 3.15.1.

The petitioner became ineligible for FS because she was enrolled at least half-time in a local college. She does not fit within any exception at (b)(5) above, for employed students. Thus, removal of her personage from her FS case was proper.

CONCLUSIONS OF LAW

1. The county agency correctly reduced the petitioner's FS effective January 1, 2013, because the petitioner was enrolled at least half-time in an institution of higher education, and she did not fit into an exemption at 7 C.F.R. §273.5(b) at that time.

THEREFORE, it is

ORDERED

That the petition 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 23rd day of April, 2013

\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 April 23, 2013.

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