



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147835

PRELIMINARY RECITALS

Pursuant to a petition filed March 05, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on April 09, 2013.

The issue for determination is whether the MiLES was correct to deny petitioner's January 18, 2013 FS application.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Alma Lezama, HSPC, Senior
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is enrolled as a student at least half-time in an institution of higher education.

3. Petitioner is between the ages of 18 and 49 years and does not fall within any of the FS exemptions for students. See, below *Discussion* section.
4. Petitioner applied for FS with the County on January 18, 2013; the County denied petitioner's FS application because he does not fall within any of the FS exemptions for students.

DISCUSSION

An individual who is ages 18 to 49 and who is enrolled at least half-time in an institution of higher education is not eligible for FS unless the individual qualifies for an exemption. 7 C.F.R. § 273.5(a) (2011); *FoodShare Wisconsin Handbook* ["FWH"] 3.15.1. Enrollment as a student is deemed to continue through normal periods of class attendance, vacation, and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school). 7 C.F.R. § 273.5(c) (2011); FWH 3.15.1.

The exemptions include:

1. Employed at least 20 hours a week at any wage.
2. Self employed at least 20 hours a week with self employment earnings (after SE expenses are subtracted) equivalent to at least the federal minimum wage for 20 hours a week ($\$7.25 \times 20 = \145 a week).
3. Both employed and self-employed at least 20 hours a week and earning at least the federal minimum wage for 20 hours a week ($\$7.25 \times 20 = \145 a week). Earnings are based on self employment income (after SE expenses are subtracted) plus gross income from other employment.
4. Participating in a federal or state work study program.
 - a. Continue the exemption until the end of the month in which the school term ends, or the student refuses to do his assigned work. A student who has stopped working during the school year because the work study funding has run out would continue to be classified as an eligible student until the end of the school term.
 - b. The exemption does not cover school breaks of longer than one month, unless the student is participating in work study during the break.
5. Responsible for the care of a dependent household member under age 6. If 2 people exercising *parental control* are in the food unit, allow student status to only 1 person per *child*.
6. Responsible for the care of a dependent household member who has reached age 6 but is under age 12 if the agency determines adequate child care is unavailable. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
7. Is a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and is exercising care and control of a dependent food unit member under the age of 12. To apply this provision there must be only one biological or adoptive parent, or *stepparent* in the same food unit as the child. If there is no biological or adoptive parent or stepparent living with the child, another full-time student living with the child may qualify as an eligible student under this provision if the student has parental control of the child and does not live with his or her *spouse*.
8. Receiving a Tribal *TANF* cash payment, *W-2* cash payment, or working in a *W-2* Trial Job. Assigned to or placed in an institution of higher learning by *WIA*.
9. Enrolled in a *W-2* employment position or other *TANF* funded program under Title IV of the Social Security Act.
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.

11. Participating in an on-the-job training program. This exemption applies only during the period of time the person is being trained by the employer.
12. Is assigned to or placed in an institution of higher education through or in compliance with the requirements of *FSET*.
13. Is 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.

See, 7 C.F.R. § 273.5(b) (2011); FWH 3.15.1.

Petitioner does not fall within any of the above exemptions. In particular, petitioner is not employed. Petitioner does not dispute this. Therefore, the County correct to deny petitioner's January 18, 2013 FS application.

Petitioner testified that the above law and policy should not apply to him because he had a job but lost it in January with only 1 hour notice. He argues that the purpose of his being a student is because he is unemployed, is educating himself for new employment, and is seeking employment. He argues that the above law and policy encourages people to drop out of school. The arguments makes are understandable, but do not change the requirements of the law and policy as detailed above. As an Administrative Law Judge ["ALJ"] I must follow and apply law and policy as they are written.

CONCLUSIONS OF LAW

For the reasons discussed above, the County was correct to deny petitioner's January 18, 2013 FS application.

NOW, THEREFORE, it is

ORDERED

That the petition 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 16th day of April, 2013

\sSean P. Maloney
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 16, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability