



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148485

PRELIMINARY RECITALS

Pursuant to a petition filed April 4, 2013, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the La Crosse County Dept. of Human Services to reduce FoodShare benefits (FS), a hearing was held on May 2, 2013, by telephone.

The issue for determination is whether petitioner's wife is an ineligible student.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Tom Miller

La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner received FS for a household that included his wife and children. In March, 2013, they received \$668 FS. A review was done in March, 2013. Petitioner reported that his wife was a full-time student at [REDACTED] and that she was self-employed.
3. The county obtained household income information. Petitioner's wife's 2012 net self-employment income was \$5,351.

4. By a notice dated March 28, 2013, the county informed petitioner that FS would be \$110 per month beginning April 1, 2013. The primary reduction was due to petitioner's wife being removed from the case as an ineligible student. In addition petitioner's income increased. The amount was changed to \$113 when a small error was discovered.

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.

Italics added; 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's wife is ineligible because her self-employment income amounts to less than 20 hours per week based upon minimum wage of \$7.25 per hour. The rule concerning students with self-employment income is not a local policy; it is a federal FS requirement. Neither the county nor the Division of Hearings and Appeals has authority to ignore or make an exception to the rule.

Petitioner did assert that the income calculations were incorrect. I thus must conclude that the agency determined the FS correctly following the March, 2013 review.

CONCLUSIONS OF LAW

Petitioner's wife is ineligible for FS because she is a full-time student whose self-employment income is insufficient to meet an exception to the ineligibility.

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 May, 2013

\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 May 7, 2013.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability