



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152385

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 29, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly terminated the petitioner's FS because he is an ineligible 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: Jose Silvestre
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is the only member of his FS household.

2. On August 28, 2013, the petitioner completed an ACCESS online renewal application. He stated that he is a full-time student and works part-time for Express Employment Professionals. Exhibit 3, pp. 4-5.
3. On August 30, 2013, the respondent sent a written request for verification of his employment to be submitted by September 9, 2013. On September 3, 2013, the respondent verified hours via pay stubs and contact with employer. Based on that information, the respondent concluded that the petitioner did not work the necessary 20 hours per week to be a student eligible for FS.
4. On September 4, 2013, the respondent sent a notice to the petitioner stating that his FS would end effective September 1, 2013, because petitioner is “enrolled at least half-time in college or vocational school” and cannot get FS unless he is also unable to work, in a work placement or work study program, receiving W-2 or TANF, or taking care of a child under 6 (o in some cases, 12). Exhibit 4.
5. The petitioner is a fulltime student at the [REDACTED]. He is 27 years of age, has no dependents and is not disabled. He is not participating in a Work Study Program.

DISCUSSION

The *FoodShare Wisconsin Handbook* provides directives to county agencies which set forth the agency and client responsibilities when processing an FS application or review. The *FoodShare Wisconsin Handbook*, §3.15.1, indicates that a person age 18-49 enrolled in an institution of higher education is ineligible for FS benefits, *unless* he/she is:

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.

The federal regulations at 7 CFR § 273.5 contain the same criteria.

In a Fair Hearing concerning the propriety of a discontinuance or reduction of benefits, such as this, the agency has the burden of proof to establish that the action taken was correct. Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the discontinuance action was required.

The petitioner conceded that the respondent's calculations of his average hours was correct. However he noted that he can only work so many hours; his employer is a temp agency, and this limits the hours that are available. The petitioner also noted that he was never aware of the requirement that he maintain an average workload of 20 hours per week.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant him relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, he is not eligible; no exception applies; and I am without any equitable powers to direct any remedy beyond the remedies available under law.

The petitioner testified that he is seeking another job, and also indicated that he cares for his 3 children. The respondent noted that it was unaware that the petitioner had children in his care, as this had never been previously reported. While this information may provide for some prospective eligibility for the petitioner, it does not impact the September 1, 2013, termination. However, in light of the foregoing, I would recommend that the petitioner re-apply for FS benefits.

CONCLUSIONS OF LAW

The ESC correctly terminated the petitioner's FS as he was an ineligible student at that time.

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 15th day of November, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 15, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability