



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING
DECISION

FOO/151279

PRELIMINARY RECITALS

Pursuant to a petition filed August 12, 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 rehearing was held on November 06, 2013, at Milwaukee, Wisconsin. The petitioner failed to appear for his September 4, 2013 hearing and his appeal was dismissed as abandoned. Petitioner requested a rehearing, and that rehearing was granted for good cause.

The issue for determination is whether Milwaukee Enrollment Services (MES) correctly discontinued the petitioner’s FoodShare (FS) benefits effective August 1, 2013, as an ineligible student who was an “unpaid” intern at a University.

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, Room 651
Madison, Wisconsin 53703
By: Pang Thao-Xiong, IM advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Milwaukee County who has resided in [REDACTED], Tennessee since about September, 2013.

2. The petitioner received FoodShare (FS) benefits for a household of one from July 9, 2012 to July 31, 2013.
3. The petitioner has been at least a half time student at the [REDACTED] since the fall of 2012.
4. During his July, 2013 FS review, Milwaukee Enrollment Services (MES) requested petitioner to verify his work study status and payment for that work study.
5. MES discovered that petitioner's "work study" was an unpaid internship, and was not a state or federally financed work study program during the school year.
6. The petitioner was not employed at least 20 hours per week and was unable to establish that he met any of the other student FS eligibility criteria for FS benefits pursuant to the FoodShare Eligibility Handbook (FEH) § 3.15.1.
7. Milwaukee Enrollment Services (MES) sent an August 2, 2013 Notice of Decision to the petitioner stating that his FS benefits would discontinue effective August 1, 2013, due to being an ineligible student per FoodShare Wisconsin Handbook, 3.15.1, "Student Eligibility."

DISCUSSION

A person who is enrolled at least half time in higher education is ineligible for FS unless s/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 she 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.

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 (#13) 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." FoodShare Eligibility Handbook (FEH) § 3.15.1.

During the November 6, 2013 hearing, petitioner presented no reliable testimony or evidence to establish that he was enrolled in an educational program to be completed in 2 years **AND** would obtain a certification or diploma which would lead to employment that is in demand (exemption #13).

In this case, the negative action was Milwaukee Enrollment Services' determination during his July, 2013 FS review that petitioner was incorrectly determined eligible as of July 9, 2012 for FS benefits for "work study," when he actually was in an "unpaid internship." MES determined that petitioner was and continued to be an ineligible student at a university. Petitioner was unable to present any reliable testimony or evidence to indicate MES' determination was incorrect. The petitioner was unable to refute that he was not employed at least 20 hours per week, and was unable to establish that he met any of the other student FS eligibility criteria per the FoodShare Eligibility Handbook (FEH) § 3.15.1. Therefore, I must conclude that Milwaukee Enrollment Services (MES) correctly discontinued the petitioner's FoodShare (FS) benefits effective August 1, 2013, due to being an ineligible student.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services (MES) correctly discontinued the petitioner's FoodShare (FS) benefits effective August 1, 2013, due to being an ineligible student.

THEREFORE, it is

ORDERED

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, Room 651, 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 17th day of January, 2014

\sGary M. Wolkstein
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 January 17, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability