



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154606

PRELIMINARY RECITALS

Pursuant to a petition filed January 04, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 13, 2014, by telephone (at the petitioner’s request).

The issue for determination is whether the Department correctly denied the petitioner’s FS November 2013 FS application. More specifically, the question is whether the petitioner was ineligible for FS due to her status as a college student.

There appeared at that time 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: No appearance

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner filed an FS application on November 6, 2013, as a household of one person. In her application, the petitioner acknowledged that she was a full-time post-secondary student. On November 11, 2013, the Department issued a written verification request to the petitioner at her correct address, stating that she must provide documentation to verify her school status and rent expense by December 9, 2013. The agency did not receive that documentation at any time from November 6 through December 2013. The Department then issued a notice to the petitioner on December 10, 2013, advising that her FS application had been denied. The stated reason for denial was that the petitioner had not provided the requested verification. The petitioner timely appealed.
3. The petitioner was a full-time student and not employed in November and December 2013. Thus, the petitioner was not employed for 20 hours per week during that period.
4. There is no evidence in the hearing record that the petitioner is responsible for the care of a dependent household member under the age of thirteen, or that she is receiving W-2 (Temporary Assistance to Needy Families) payments. She is 26 years old.

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 asserted her belief that she probably sent in verification. In the end, however, it would not have made a difference. The petitioner was ineligible for FS because she was enrolled at least half-time in a post-secondary institution. She is not under age 18 or 50 or older, and hence not exempt from the bar against students receiving FS. She does not fit within any exception at (b)(5) above, for employed students. Thus, denial of her FS case was proper, even if she did submit verification.

CONCLUSIONS OF LAW

1. The county agency correctly denied the petitioner's FS application of November 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, 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 14th day of February, 2014

\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 February 14, 2014.

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