



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/158802

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 02, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on September 30, 2014.

The issue for determination is whether the petitioner must repay an overpayment of FS.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Rhonda Kramer, ESS  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County who received FS between September 4, 2013 and May 21, 2014.

2. From at least September 4, 2013 to May 21, 2014 petitioner was a full-time college student enrolled in the college's meal plan that allowed her to eat over half of her meals on campus. The campus was closed December 22, 2013-January 6, 2014.
3. On May 28, 2014 the agency issue a notice of FS overpayment to the petitioner. It states that petitioner was overpaid \$1115 in FS between September 4, 2013 and May 21, 2014 due to non-client error. See Exhibit 4.

### DISCUSSION

The petitioner was a full-time student who was on a meal plan that allowed her to eat over half of her meals on campus. The agency determined that it had incorrectly allowed her to receive benefits while on a meal plan at college because of the following FoodShare policy found at *FoodShare Wisconsin Handbook*, §13.5.1.:

A student who lives in campus housing and purchases a meal plan that provides more than half of their meals is not eligible for FS, even if the student does not eat meals from the meal plan.

The petitioner testified that the campus was closed December 22, 2013-January 6, 2014 and there was no access to the meal plan during that period. I do not find that the policy contemplates this exception. Nor could I find any provision in the federal code of regulations that prevents the Department from enacting this policy. Rather, the federal code that appears to control this policy states:

**(7) Ineligible household members.** The following persons are not eligible to participate as separate households or as a member of any household:

- (i)** Ineligible aliens and students as specified in §§ 273.4 and 273.5, respectively;
- (ii)** SSI recipients in "cash-out" States as specified in § 273.20;
- (iii)** Individuals disqualified for noncompliance with the work requirements of § 273.7;
- (iv)** Individuals disqualified for failure to provide an SSN as specified in § 273.6;
- (v)** Individuals disqualified for an intentional Program violation as specified in § 273.16; and
- (vi) Residents of an institution, with some exceptions. Individuals must be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. Exceptions to this requirement include only the individuals listed in paragraphs (b)(7)(vii)(A) through (b)(7)(vii)(E) of this section.** The individuals listed in paragraphs (b)(7)(vii)(A) through (b)(7)(vii)(E) can participate in the Program and must be treated as separate households from the others with whom they reside, subject to the mandatory household combination requirements of paragraph (b)(1) of this section, unless otherwise stated:
  - (A)** Individuals who are residents of federally subsidized housing for the elderly;
  - (B)** Individuals who are narcotic addicts or alcoholics and reside at a facility or treatment center for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program. This includes the children but not the spouses of such persons who live with them at the treatment center or facility;
  - (C)** Individuals who are disabled or blind and are residents of group living arrangements;
  - (D)** Individual women or women with their children who are temporarily residing in a shelter for battered women and children; and
  - (E)** Individuals who are residents of public or private nonprofit shelters for homeless persons.

- (vii) Individuals who are ineligible under § 273.11(m) because of a drug-related felony conviction.
- (viii) At State agency option, individuals who are disqualified in another assistance program in accordance with § 273.11(k).
- (ix) Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, or who are violating a condition of probation or parole who are ineligible under § 273.11(n).
- (x) Individuals disqualified for failure to cooperate with child support enforcement agencies in accordance with § 273.11(o) or (p), or for being delinquent in any court-ordered child support obligation in accordance with § 273.11(q).
- (xi) Persons ineligible under § 273.24, the time limit for able-bodied adults.

7 C.F.R. 273.1(b)(7)(**emphasis added**). The exceptions listed here are clear, and the petitioner does not meet those. The agency’s representative at hearing did not believe this was the correct guiding regulation because of the use of the word “institution.” However, she offered no other citation to a guiding regulation for this policy. It appears here that the term “institution” above is quite broad and includes facilities that are more than in-patient institutions as she suggested (e.g., battered women’s shelters, homeless shelters), such as “institutions of higher education”. I add that the language used in the *FoodShare Wisconsin Handbook* includes the language of “institutions of higher education”. See *FoodShare Wisconsin Handbook* §3.15.1.

Finally, the policy is quite narrow in that it makes ineligible from FS those students who purchase a meal plan, even if the student does not eat meals from the meal plan. Thus, even if the school was closed from December 22, 2013-January 6, 2014, she was still part of a meal plan and there’s no evidence to suggest that the meal plan was discontinued for that time period. The federal regulation following from that cited above provides:

(c) *Unregulated situations.* For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably and consistently throughout the State.

7 C.F.R. 273.1(c). Here, the agency has expressed its policy in the *FoodShare Wisconsin Handbook* §3.15.1. There is no evidence to suggest that the agency has not applied it fairly, equitably and consistently throughout the State.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. 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.

**CONCLUSIONS OF LAW**

The agency correctly determined that the petitioner was ineligible for FS because she was a full-time college student enrolled in the college’s meal plan that allowed her to eat over half of her meals on campus.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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).

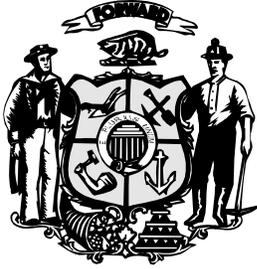
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 Milwaukee,  
Wisconsin, this 6th day of October, 2014

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\sKelly Cochran  
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 October 6, 2014.

Racine County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney Patricia Delessio