



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159169

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 19, 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 August 12, 2014, by telephone.

The issue for determination is whether the Department correctly discontinued the petitioner’s FS, due to residence in a treatment facility that provides over 50 percent of her meals.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Leslie Vosters, Fair Hearing Coordinator  
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 # ) is a resident of Outagamie County.
2. The petitioner applied for FS as a household of one person on May 21, 2014. A FS case was opened.

3. The agency later received clarification that the petitioner had been residing at [REDACTED] [REDACTED], a drug/alcohol treatment facility, since June. The facility provides all meals for the petitioner. The facility has declined to act as an authorized representative for FS purposes for the petitioner or any other resident.
4. On July 14, 2014, the Department issued written notice to the petitioner advising that her FS would be discontinued effective August 1, 2014.

### DISCUSSION

A person who is incarcerated or institutionalized for 30 days or more is not eligible to receive FS. *Foodshare Wisconsin Handbook (FSWH)*, §§ 3.2.1.2.2, 3.2.1.4 & 3.2.1.5, available at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm> ; 7 C.F.R. § 273.1(b)(7). The theory behind the policy is that the person's nutritional needs are being met by the facility, so FS is a duplicative benefit. The facility need only supply 51% of the person's food for this ban to apply. There is no dispute as to the duration or fact of the petitioner's residence in the treatment facility. Thus, the closure was correct.

The lengthy *Handbook* language that applies to his case is as follows:

#### **3.2.1.5 Group Living Arrangement**

A group living arrangement is a public or private nonprofit residential setting serving no more than 16 residents. It must be certified by the appropriate state or local agencies. An example may be a Community Based Residential Facility.

...

Determine the resident's eligibility as a 1 person food unit when the facility applies as an authorized representative.

...

#### **3.2.1.5.3 Drug & Alcohol Treatment Centers**

Private, nonprofit centers providing treatment or drug and alcohol addiction are not institutions.

Publicly operated mental health centers certified as drug and alcohol addiction treatment and rehabilitation programs are not institutions. ... in order for residents of a drug and alcohol treatment center to be certified to receive FS the center must be:

1. a). Tax exempt, and
  - b). Certified by the state as either receiving or eligible to receive or operating to further the purposes of part B of title XIX (Medicaid). This may include faith-based treatment centers.

**or**

2. Authorized as a retailer by FNS.

[REDACTED] [REDACTED] is not authorized as a retailer, but is certified by the state under Medicaid.]

An authorized representative must apply for these residents. The center employs and appoints the authorized representative. The center may choose a representative to be the FoodShare payee or an authorized buyer. S/he will receive a Wisconsin QUEST card to access FoodShare benefits on behalf of the resident. The center may also choose the resident to be the sole QUEST cardholder as

the primary person of the case. The QUEST cardholder may purchase food for meals or meals prepared or served by the center, or both.

*FSWH*, § 3.2.1.5.

The petitioner may reapply for FS benefits as soon as she is released from [REDACTED] [REDACTED].

**CONCLUSIONS OF LAW**

1. The Department correctly discontinued FS benefits to the petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 18th day of August, 2014

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Nancy 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 August 18, 2014.

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