



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
Redact
[Redacted]

DECISION

FOO/161568

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on November 18, 2014, at La Crosse, Wisconsin.

The issue for determination is whether the respondent correctly determined that petitioner was not eligible for FS benefits as a full time student.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
Redact
[Redacted]

Respondent:

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

By: Tom Miller

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of La Crosse County and has historically received FS benefits as a 1 person household.
2. Petitioner sought FS benefits via application September 12, 2014. See, Exhibit 3.

3. By notice dated October 16, 2014, petitioner was denied FS benefits as follows:
September 12, 2014-September 30, 2014: income exceeds FS program limits
October 1, 2014-October 31, 2014: Ineligible student
See, Exhibit 10.
4. Petitioner's net adjusted income for September, 2014, was 772.86. The Maximum FS allotment for petitioner is \$189.00. 30% of petitioner's net adjusted income is \$231.90, which is greater than the maximum FS allotment. Exhibit 7.
5. Petitioner is a student, and is not working due to chronic pain in her back and neck. Petitioner left her last employment position related to her medical issues.

DISCUSSION

Petitioner did not establish any error by the respondent in determining her income for September, 2014. Therefore, that denial is upheld. She argues, however, that her denial for October, 2014, forward, is incorrect as she qualifies for benefits as a student. Specifically, petitioner claims that she is physically and/or mentally unable to work. She further contends that she was never asked to provide any verification of this at the time of her application or interview.

In accordance with 7 CFR 273.5, Wisconsin's *Foodshare Handbook* section entitled "STUDENT ELIGIBILITY," provides that:

...
Anyone, age 18-49, enrolled half time or more, in an institution of higher education is ineligible, unless s/he meets one of the following criteria.

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.

Foodshare Handbook § 3.15.1.

The respondent could not verify whether or not it ever sought to determine petitioner's eligibility on this basis. I note that electronic Case Comments do note that petitioner left her last job due to numerous doctor appointments, which does corroborate petitioner's testimony that she is unable to work at this time.

I will remand this matter back to the respondent to re-determine petitioner's FS eligibility under *Foodshare Handbook* § 3.15.1. Petitioner has testified that she is physically or mentally unfit for gainful employment; the respondent may, in its discretion, pursue a verification of that claim.

CONCLUSIONS OF LAW

1. The respondent correctly determined petitioner's September, 2014, income, and correctly denied her FS benefits for September 12, 2014-September 30, 2014.
2. The respondent failed to determine whether petitioner was physically or mentally unfit for gainful employment prior to determining her to be ineligible for FS benefits as a student as of October 1, 2014.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to re-determine petitioner's FS eligibility as a student as of October 1, 2014, in accordance with *Foodshare Handbook* § 3.15.1. All actions required by

this Order shall be completed within 10 days following issuance of this Decision. In all other regards, petitioner's appeal 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 16th day of December, 2014.

\sPeter McCombs
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 December 16, 2014.

La Crosse County Department of Human Services
Division of Health Care Access and Accountability