



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/161672

**PRELIMINARY RECITALS**

Pursuant to a petition filed October 30, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 03, 2014, at Racine, Wisconsin.

The issue for determination is whether Petitioner’s FoodShare benefits were correctly discontinued because of his student status.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



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Respondent:

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

By: Rhonda Kramer

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Racine County.
2. Petitioner filed this appeal to contest a November 1, 2014 discontinuance of his FoodShare.

3. Petitioner's FoodShare were discontinued because he is a full time student at an institution of higher learning and did not meet one of the criteria required for FoodShare eligibility of full time students.
4. Petitioner's is a full time student at the [REDACTED]
5. Petitioner is an [REDACTED] volunteer and does receive a stipend of \$973.00 per month and works 160 hours per month. This is the equivalent of \$6.08 per hour.

### DISCUSSION

A student enrolled in an institution of higher education can only non-financially qualify for FoodShare benefits in limited circumstances:

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.

1. Employed at least 20 hours a week at any wage.
2. Self employed at least 20 hours a week with self employment earnings (after SE expenses are subtracted) equivalent to at least the federal minimum wage for 20 hours a week ( $\$7.25 \times 20 = \$145$  a week).
3. Both employed and self-employed at least 20 hours a week and earning at least the federal minimum wage for 20 hours a week ( $\$7.25 \times 20 = \$145$  a week). Earnings are based on self employment income (after SE expenses are subtracted) plus gross income from other employment.
4. Participating in a federal or state work study program.
  - Continue the exemption until the end of the month in which the school term ends, or the student refuses to do his assigned work. A student who has stopped working during the school year because the work study funding has run out would continue to be classified as an eligible student until the end of the school term.
  - The exemption does not cover school breaks of longer than one month, unless the student is participating in work study during the break.
5. Responsible for the care of a dependent household member under age 6. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
6. Responsible for the care of a dependent household member who has reached age 6 but is under age 12 if the agency determines adequate child care is unavailable. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
7. Is a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and is exercising care and control of a dependent food unit member under the age of 12. To apply this provision there must be only one biological or adoptive parent, or stepparent in the same food unit as the child. If there is no biological or adoptive parent or stepparent living with the child, another full-time student living with the child may qualify as an eligible student under this provision if the student has parental control of the child and does not live with his or her spouse.
8. Receiving a Tribal TANF [Temporary Assistance for Needy Families] cash payment, W-2 cash payment, or working in a W-2 Trial Job. Assigned to or placed in an institution of higher learning by WIA [Workforce Investment Act].

9. Enrolled in a W-2 employment position or other TANF funded program under Title IV of the Social Security Act.
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.
11. Participating in an on-the-job training program. This exemption applies only during the period of time the person is being trained by the employer.
12. Is assigned to or placed in an institution of higher education through or in compliance with the requirements of FSET [FoodShare Employment and Training].
13. Is 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 (FS) Handbook, at §3.15.1; also found in the Code of Federal Regulations. See 7 CFR 273.5.*

Petitioner notes that his [REDACTED] position meets FoodShare Employment and Training program requirements. Nonetheless, these student eligibility rules are not the same part of the FoodShare regulatory framework as the FSET program. The evidence demonstrates that the county agency correctly discontinued Petitioner's FoodShare benefits because, as more than a half time student in an institution of higher education, he did not meet any of the eligibility exceptions noted above at the time of that discontinuance.

**CONCLUSIONS OF LAW**

That the county agency correctly discontinued Petitioner's FoodShare benefits because there is no evidence to indicate that, as a student, he was FoodShare eligible under any of the circumstances noted in the Discussion.

**THEREFORE, it is** **ORDERED**

That this 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 Milwaukee,  
Wisconsin, this 29th day of December, 2014

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\sDavid D. Fleming  
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 29, 2014.

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