



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
Redact

DECISION

FOO/162388

PRELIMINARY RECITALS

Pursuant to a petition filed December 02, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 13, 2015, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner is ineligible for FoodShare because she is a fulltime college graduate student.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
Redact

Respondent:

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

By: [Redacted]

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. The petitioner (CARES # [Redacted]) is a resident of Dunn County.
2. The county agency denied the petitioner's October 6, 2014, application for FoodShare because she is a fulltime college student.

3. The petitioner is fulltime college student seeking her master's degree in school counseling.
4. The petitioner is employed 10 hours per week
5. The petitioner participates 40 hours a week in an unpaid internship in her field of study.

DISCUSSION

Persons enrolled at least half time in an institution of higher education are ineligible for FoodShare unless they qualify for an exemption. 7 CFR § 273.5(a). The petitioner is enrolled fulltime in a graduate program to earn a master's degree in school counseling. She is now fulfilling her requirement for that program by participating 40 hours a week in an unpaid internship in her field of study. The county agency denied her application for FoodShare because she is not working at a paid position at least 20 hours a week or receiving work-study benefits, two of the exemptions that allow students to receive FoodShare. 7 CFR § 273.5(b)5 and 6. I agree that she does not meet these exemptions, but FoodShare regulations also exempt those "participating in an on-the-job training program." 7 CFR § 273.5(b)(7). The regulation does not define "on-the-job" training," but because the petitioner's internship involves the type of work she will perform in the field she seeks to enter, I find that it qualifies her for the exemption. Therefore, she is eligible for FoodShare.

I note to the petitioner that when her internship ends, she must report this to the agency because her FoodShare will also end unless she has graduated. If she does not report this, she will have an overpayment that she must repay.

CONCLUSIONS OF LAW

The petitioner may receive FoodShare while she is a fulltime student because she participates in on-the-job training.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it redetermine her eligibility for FoodShare. When doing so, it shall not consider her an ineligible student. It shall also ensure that, based upon the date of her application, she receives any retroactive benefits she is entitled to.

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 January, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 16, 2015.

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