



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/173060

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on April 21, 2016, at Green Bay, Wisconsin.

The issue for determination is whether petitioner is an ineligible student for FS eligibility purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner received FS from at least April, 2015, through the present. Petitioner requested to close her FS, which was accomplished effective May, 2016, due to questions regarding her eligibility and a potential overpayment determination.

3. The respondent determined on March 21, 2016, that petitioner should be eligible for FS.
4. Petitioner filed an appeal on March 25, 2016.

DISCUSSION

As a general proposition, the federal FS rules declare that a person aged 18 to 49, who is enrolled in an institution of higher education, is ineligible to receive FS. This general prohibition is stated in 7 C.F.R. §273.5(a), below:

§273.5 Students

- (a) *Applicability.* ***An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section.*** An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum ...
- (b) *Student Exemptions.* ***To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.***
- (1) Be age 17 or younger or age 50 or older;
 - (2) Be physically or mentally unfit;
 - (3) Be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;
 - (4) Be enrolled as a result of participation in the Job Opportunities & Basic Skills program under Title IV ...
 - (5) ***Be employed for a minimum of 20 hours per week*** and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;
 - (6) Be participating in a State or federally financed work study program during the regular school year. ...
 - (7) Be participating in an on-the-job training program. ...
 - (8) Be responsible for the care of a dependent household member under the age of 6;
 - (9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available ...
 - (10) Be a single parent enrolled in an institution of higher education on a full-time basis and be responsible for the care of a dependent child under age 12. ...
 - (11) Be assigned ... an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section. [e.g., §236 program under the Trade Act of 1974].

(emphasis added)

7 C.F.R. §273.5(a),(b). See in accord, the Wisconsin policy authority, *FS Wisconsin Handbook*, 3.15.1.

The *FS Wisconsin Handbook*, 3.15.1, indicates that an exception to general student ineligibility exists where an applicant 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.

The respondent provided the following comments on petitioner's case:

*Client states she got her Associate's Degree in 2013, but could not find a job. Went back to school to get her Bachelors.

*While working on Bachelor's Degree, client was also working at [REDACTED] starting 4th quarter 2014. Client was working at least 20 hours a week. This made her an eligible student and she could keep receiving Food Share benefits.

*Client was awarded work study for the 2015-2016 school year but did not accept it as she already had a job at [REDACTED].

*Client lost her job at [REDACTED] in Oct. 2015. Client reported the job loss timely (reported at the end of Oct. 2015).

*Client will graduate May 14, 2016.

Client contends that she should have remained an eligible student for Food Share as she was in a program designed to be completed in two years. (Already had her Associates Degree, going back to school the extra two years to get her Bachelors.)

Exhibit 4.

I concur that the respondent has correctly concluded that petitioner is an eligible student, as she was in a program designed to be completed within 2 years. As such this matter will be remanded to the respondent to rescind its ineligibility determination.

CONCLUSIONS OF LAW

Petitioner is an FS-eligible student, as she was in a program designed to be completed within 2 years and obtaining certification or a diploma from the program will lead to employment that is in demand.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent to rescind its ineligibility determination within 10 days following receipt of this Decision.

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 19th day of May, 2016

\sPeter McCombs
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 May 19, 2016.

Brown County Human Services
Division of Health Care Access and Accountability