



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/172166

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 18, 2016, 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 March 15, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner’s FoodShare (FS) benefits for one year effective November 1, 2015 because he is a drug felon who tested positive for THC on a drug test.

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]

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

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. On August 8, 2014 the petitioner pled guilty to possession of THC as a Second and Subsequent offense in Racine County Circuit Court Case Number [REDACTED]. This is a felony drug conviction.
3. On November 25, 2015 the petitioner completed a renewal for of his FoodShare (FS) benefits.
4. On November 27, 2015 the agency mailed the petitioner a notice stating that he had to complete a drug test by December 7, 2015.
5. On November 30, 2015 the petitioner completed a drug test. The drug test was positive for marijuana/THC, Alprazolam, and Oxycodone.
6. On December 2, 2015 the agency mailed the petitioner a notice stating that his application for FS benefits had been denied effective December 1, 2015 because he had been convicted of a drug felony and he had failed his drug test. The notice went on to state that there was a 12 month sanction period, and that the petitioner could reapply for FS benefits after the 12 month period ended.
7. On February 18, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### DISCUSSION

If a person has been convicted of a drug-related felony, he is ineligible for FS subject to state rules concerning regaining eligibility. 7 C.F.R. §273.11(m). In Wisconsin anyone convicted of a drug-related felony within five years prior to the FS application must pass a drug test to gain eligibility. FS Handbook, Appendix 3.19.1. If the drug test is positive, the person is ineligible for twelve months. If the person refuses to take the test, FS are denied. He can reapply and agree to take the drug test. Id., App. 3.19.1.1.

Here the petitioner is a drug felon. He applied for FS benefits, and took a drug test, which came back positive for marijuana/THC, alprazolam, and oxycodone. The petitioner argues that he has a prescription for alprazolam and oxycodone. I have reviewed the petitioner's medical records, and this is correct. He is prescribed both alprazolam, which is Xanax and Percocet, which has oxycodone in it. The problem though is that the petitioner was still positive for THC. The petitioner argued that this was an ongoing issue with probation and parole as he routinely receives false positive results for THC on drug tests. I do not find this testimony credible. The petitioner has not submitted any verification of this. I have never seen a false positive result for THC on a drug test. I further note that the petitioner's drug felony involved THC, which is the same drug he now tests positive for. There is no prescription for THC. Given that the petitioner is a drug felon who tested positive for THC, I must conclude that the agency correctly discontinued the petitioner's FoodShare (FS) benefits for one year effective November 1, 2015.

### CONCLUSIONS OF LAW

The agency correctly discontinued the petitioner's FoodShare (FS) benefits for one year effective November 1, 2015 because he is a drug felon who tested positive for THC on a drug test.

**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 Milwaukee,  
Wisconsin, this 29th day of March, 2016

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\sCorinne Balter  
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 March 29, 2016.

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