



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/143270

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on September 20, 2012, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly determined Petitioner's FS benefits would end effective September 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Aina Bromberek

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner was convicted of a drug felony on May 23, 2012.

3. On June 26, 2012, the Petitioner contacted the Moraine Lakes Consortium call center to request FS benefits.
4. On June 29, 2012, an interview was conducted by the agency regarding the Petitioner's FS benefits. At that time, the Petitioner agreed to take a drug test as a condition of continuing his FS benefits.
5. On July 2, 2012, the Petitioner's drug test was scheduled with an agency representative. The Petitioner refused to take the test.
6. On July 26, 2012, the agency was notified that the Petitioner refused the drug test.
7. On July 30, 2012, the agency issued a Notice of Decision informing the Petitioner that his FS benefits would end effective September 1, 2012.
8. On August 20, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

For FoodShare eligibility purposes, a drug felon is a person who is convicted of a felony in a state or federal court involving the possession, use or distribution of a controlled substance Illegal or unauthorized medicines, inhalants, drugs or narcotics. Convicted drug felons must have a negative drug test result to become eligible for FS. FS Handbook § 3.19.1 & 7 CFR § 273.11(m).

Drug tests required by another credible source may be used if taken within the last 30 days. Examples of credible sources include, but are not limited to, probation officers, employers, FEPs, etc. FSH § 3.19.1.

FS applicants who meet the definition of a drug felon and agree to take a drug test will be tentatively approved until a drug test is taken. FSH § 3.19.1.1. If the individual passes this test, s/he remains eligible. If the applicant refuses to take a drug test, s/he will be denied indefinitely until s/he agrees to take a drug test. FSH § 3.19.1.1. If the drug test result is negative, the individual remains eligible.

The FS Handbook indicates that FS applicants who miss a scheduled drug test should be sanctioned immediately. If the applicant then agrees to take a test within the application period, the agency can schedule another test. If the applicant takes and passes this test, the sanction can be removed and the applicant is eligible for a supplement for any benefits missed. If the applicant misses a drug test and requests another test after the initial application period, the agency must set up the test. If the applicant passes this test, benefits are approved for the next possible payment month. FSH § 3.19.1.1.

For a one person food unit, a missed drug test appointment would result in a denial or termination of the FS case. FSH § 3.19.1.1.

In this case, the Petitioner does not dispute that he is a convicted drug felon. He testified that he refused the test on July 2, 2012 because he had questions about the test that the agency worker conducting the test would not answer. During the hearing, the Petitioner indicated a willingness to take the test if it was conducted by his probation agent. The agency representative indicated that this is acceptable. The Petitioner agreed to schedule the test with his probation agent as soon as possible. The agency worker indicated at the hearing that if she received verification from the Petitioner's probation agent that he had taken the drug test prior to October 1, 2012, she would "pend" the Petitioner's FS case so that he would continue to receive benefits until the results of the test were submitted.

The agency worker did not receive any verification from the Petitioner's probation agent prior to October 1, 2012. The Petitioner contacted this ALJ to indicate that he had taken the test but no verification of the testing was supplied to the agency or this ALJ by the probation agent. Based on the Petitioner's assertions, the agency agreed to "pend" the Petitioner's benefits for October. On October 4, 2012, this

ALJ received a copy of the Petitioner's drug test results indicating the test was negative. This information was forwarded to the agency on October 4, 2012. The Petitioner will continue to receive monthly FS benefits until there is a change in his case.

The issue for determination in this case was whether the agency's action to terminate the Petitioner's FS benefits effective September 1, 2012 based on his refusal to take a drug test was a proper action. There is no dispute that the Petitioner did refuse to take the test when scheduled. The regulations are clear that the agency must terminate benefits in those circumstances. The Petitioner subsequently resolved the issue by taking and passing the test.

CONCLUSIONS OF LAW

The agency took proper action to terminate the Petitioner's FS benefits effective September 1, 2012 when he refused to take a drug test. The Petitioner subsequently took and passed the test allowing the agency to continue his benefits until there is a change in his case.

THEREFORE, it is ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of October, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSADHCAA@Wisconsin.gov -
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The preceding decision was sent to the following parties on October 10, 2012.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability