



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/143325

PRELIMINARY RECITALS

Pursuant to a petition filed August 23, 2012, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Brown County Human Services to deny FoodShare benefits (FS), a hearing was held on September 25, 2012, by telephone.

The issue for determination is whether the agency correctly denied FS because petitioner failed a drug test.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Chelsey Groessl
Brown County Human Services
111 N. Jefferson Street
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner applied for FS on July 9, 2012. Because petitioner was convicted of a drug felony within the past five years, he was required to take a drug test.

3. On July 18 petitioner appeared at Bellin Health for the test. His first sample was declined because the temperature was out of range. Petitioner then was unable to provide a sample while being observed.
4. By a notice dated July 24, 2012, the county denied FS because petitioner failed the drug test.

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.

Under the rules the person cannot be eligible for FS unless he passes a drug test. Petitioner has not passed a drug test, and thus the county had no choice but to deny the FS application. Petitioner also did not have a positive drug test, so he can reapply for FS without having the twelve-month sanction. He will have to pass the test, however, to become eligible.

CONCLUSIONS OF LAW

The county correctly denied FS for petitioner because petitioner did not pass a drug test.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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

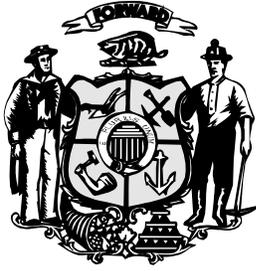
Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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 Madison,
Wisconsin, this 26th day of September, 2012

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

c: Brown County Human Services - email
Department of Health Services - email



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 26, 2012.

Brown County Human Services
Division of Health Care Access and Accountability