



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/146600

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dodge County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 25, 2013, at Juneau, Wisconsin.

The issue for determination is whether the Department erred in issuing a FS Program sanction against petitioner for a positive drug test.

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: Heidi Denure

Dodge County Department of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. Petitioner was a FoodShare recipient. At the time of a periodic case review, she reported a felony drug conviction.
3. Petitioner's case worker required a drug test.

4. Petitioner went for the test at an independent clinic.
5. The clinic completed a results form that states “no temp” and “█ left.”
6. The results form includes a field for Step 6 which designates check boxes for “Negative,” “Positive,” and “Refusal to Test.” None of the boxes are checked.
7. The Department issued a notice to petitioner indicating a sanction due to a failed drug test.
8. Petitioner filed a timely appeal.

DISCUSSION

The Department’s Food Stamps policy states as follows:

3.19.1.2 Ongoing cases

If a felony drug conviction is reported for an eligible FS member at review or any other time, immediately schedule the individual for a drug test. Refusal to take a drug test will result in the felon being removed from the FS assistance group indefinitely until the individual agrees to take the test. If a felon tests positive on a drug test, deny FS for the individual for 12 months starting in the next possible benefit month.

FoodShare Wisconsin Handbook § 3.19.1.2; see also, 7 C.F.R. § 273.11(m).

In a Fair Hearing concerning the propriety of a denial of benefits, such as this, the county agency has the burden of proof to establish that the action taken by the county was proper. Petitioner must then rebut the agency’s case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the denial action was required.

In this case, the agency relied on the drug test results from the independent lab (ex. #1). No witness from the lab testified to explain any of the notations on the form. The notations were not clear, both in terms of legibility and meaning, on their own. The Department representative explained that the indication of “No temp” indicates that the collected urine was not at the right temperature and the test is then considered a positive. It is unclear whether this interpretation as a positive is a determination by the Department or the clinic. I have no information as to why urine would be at the wrong temperature or why it is considered a positive result.

The FS rule clearly requires a positive result for a sanction to be justified. It is also clear that the form from the lab upon which the Department relies is **NOT** checked in the box indicating a positive test. The Department has not offered enough evidence to meet its burden that petitioner tested positive as required to justify the sanction.

CONCLUSIONS OF LAW

The Department erred in issuing a sanction against petitioner for a positive drug test.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department and its county agent with instructions to reverse the sanction and issue any FS supplements retroactive to the effective date of the sanction based on the purported positive drug test. These actions shall be completed within 10 days.

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 served and 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 Madison,
Wisconsin, this 8th day of March, 2013

\sJohn P. Tedesco
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 8, 2013.

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