



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/146844

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Fond Du Lac County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 7, 2013, at Fond du Lac, Wisconsin. The hearing record was held open for 20 days for a drug test submission from the petitioner; nothing was received.

The issue for determination is whether the agency correctly sanctioned the petitioner's FS eligibility due to a failed drug screening.

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
Madison, Wisconsin 53703

By: Deb Bohlman, ESS

Fond Du Lac County Department of Social Services
87 Vincent Street
Fond Du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Fond du Lac County.
2. The petitioner applied for FS on December 14, 2012; he was granted benefits as a FS household of one person. However, he was convicted of a class G drug felony in April 2012, in case

#2010CF000255. Due to having a drug conviction in the last five years, the petitioner was required to undergo a drug screening.

- 3. The petitioner’s drug test occurred on January 3, 2013, with county drug test coordinator A. Dvorjac. The results, received January 8, 2013, were positive.
- 4. On January 18, 2013, the Department issued written notice to the petitioner advising that his FS would be discontinued effective February 1, 2013. The basis for discontinuance was imposition of a 12-month drug test failure sanction.

DISCUSSION

In Wisconsin, the sanction for a failed test by a drug felon is a one-year bar from FS. *FoodShare Wisconsin Handbook (FSWH)*, § 3.19.1.1 - 2. This policy is required by the following FS federal code language:

(m) Individuals convicted of drug-related felonies. An individual convicted ... of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession , use, or distribution of a controlled substance ... shall not be considered an eligible household member... If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. ...

7 C.F.R. §273.11(m). Wisconsin has a statute that limits a drug felon’s ineligibility to 12 months following failure of a drug test. Wis. Stat. § 49.79(5).

The petitioner does not contest that the above requirement is the law. Rather, he asserts that he was not using a controlled substance prior to the January test, and that the test was flawed. He testified that he was tested by his parole officer shortly before the January test, and that the result was negative (pass). The record was held open for 20 days for the petitioner to provide a copy of the parole officer’s clean test to this Administrative Law Judge, but nothing was received. Thus, the best evidence available is that the petitioner failed the January 2013 test.

CONCLUSIONS OF LAW

- 1. The agency correctly imposed a 12-month sanction against the petitioner’s FS eligibility, due to a failed drug test.

THEREFORE, it is

ORDERED

That the petition 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 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 10th day of April, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
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 April 10, 2013.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability