FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/147104

PRELIMINARY RECITALS

Pursuant to a petition filed February 04, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on February 27, 2013, at Madison, Wisconsin. At the request of petitioner, the petitioner was contacted for this hearing at the Jefferson County jail where she continued to be incarcerated.

The issue for determination is whether the county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective March 1, 2013 due to petitioner's incarceration for more than 30 days without meeting all Huber privilege criteria.

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: Shaun Johnson, ESS
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Dane County.
2. The petitioner has been incarcerated in jail since August 29, 2012 with a release date of March 19, 2013.
3. The petitioner did not timely report to the county agency that she was incarcerated in jail.
4. The county agency received a "prisoner alter" indicating the petitioner was incarcerated.
5. The county agency sent a January 28, 2013 Notice of Decision to the petitioner stating that her FS benefits would discontinue effective March 1, 2013, due to her incarceration in the Jefferson county jail she was ineligible for FS benefits.

DISCUSSION

An individual who is incarcerated for more than 30 days is ineligible for FS. FSH § 3.2.1.2.2.

During the February 27, 2013 hearing, petitioner admitted that she has been incarcerated since August 29, 2012 and thus was ineligible for FS per FSH § 3.2.1.2.2. Furthermore, the petitioner did not establish that she met all of the Huber criteria for FS eligibility. Petitioner explained that the only reason she requested the hearing was because she wanted to know how to re-apply for FS when she was released from jail on or about March 19, 2013. The county worker provided that information to the petitioner. Accordingly, based upon the above, I conclude that the county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective March 1, 2013 due to petitioner's incarceration for more than 30 days without meeting all Huber privilege criteria.

CONCLUSIONS OF LAW

The county agency correctly discontinued the petitioner's FoodShare (FS) benefits effective March 1, 2013 due to petitioner's incarceration for more than 30 days without meeting all Huber privilege criteria.

THEREFORE, it is **ORDERED**

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 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 19th day of March, 2013

_____

\sGary M. Wolkstein
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 March 19, 2013.

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