



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147131

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services ["Marathon"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone on February 26, 2013.

The issue for determination is whether it was correct to discontinue petitioner's FS effective January 1, 2013.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sherri Seubert, ESS
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Within the last 5 years petitioner was convicted of a felony in a state or federal court involving the possession, use or distribution of a controlled substance.
3. Petitioner submitted to a drug test and tested positive (failed) for controlled substances.

DISCUSSION

For 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 within the last 5 years. Convicted drug felons must have a negative drug test result (pass) to become eligible for FS. Drug felons that test positive (fail) for controlled substances will be sanctioned. *FoodShare Wisconsin Handbook* [“FWH”] 39.1.1. If the drug test result is positive, the individual is ineligible for 12 months from the next possible payment month. If the drug test result is negative, the individual remains eligible. FWH 39.1.1.1.; See also, Wis. Stat. § 49.79(5) (2011-12); 7 C.F.R. § 273.11(m) (2011).

Petitioner does not dispute any of the above *Findings of Fact*. Therefore, it was correct to discontinue petitioner’s FS effective January 1, 2013.

Petitioner argues that she testified positive because her arthritis was acting up, she was having pain, and she was took an old prescription drug (morphine) she found in her jewelry box. This may or may not be correct -- but even if it is correct the fact remains that she tested positive for controlled substances. Under the law, therefore, she is ineligible for FS for 12 months from the next possible payment month.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to discontinue petitioner’s FS effective January 1, 2013.

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 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 22nd day of March, 2013

\sSean P. Maloney
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 22, 2013.

Marathon County Department of Social Services
Division of Health Care Access and Accountability