



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147230

PRELIMINARY RECITALS

Pursuant to a petition filed February 07, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on March 14, 2013, at Racine, Wisconsin. The record was held open for 7 days to allow petitioner to submit additional information. Nothing was received from petitioner as of the date of this decision.

The issue for determination is whether the agency properly determined Petitioner's FS benefits would end effective February 1, 2013 because he is a felon and failed a drug test.

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: Kathy Christman

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. Petitioner was convicted of a drug felony in Wisconsin, i.e., the possession of cocaine, a class I felony, in contravention of Wisconsin Statutes 961.41(3g)(c) on August 18, 2008.
3. Petitioner applied for FS on December 20, 2012.
4. On December 21, petitioner was notified that he was required to submit to a drug test in order to receive FS. See Exhibit 2 and 7.
5. The petitioner did submit to the drug test and tested positive for “THC”. See Exhibit 3.
6. On January 8, 2013 the agency issued a Notice to the petitioner, informing the petitioner that his FS would be discontinued effective February 1, 2013 and that he could not get FS for 12 months thereafter because he had failed a drug test. See Exhibit 10 and 11.

DISCUSSION

For FS 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 to become eligible for FS. See *FS Handbook* §3.19.1 and 7 CFR §273.11(m).

FS applicants who meet the definition of a drug felon and agree to take a drug test will be tentatively approved until a drug test is taken. *FS Handbook* §3.19.1.1. If the individual passes this test, s/he remains eligible. Drug felons that test positive (fail) for controlled substances will be sanctioned for 12 months. *Id.*

In this case, the petitioner does not dispute that he is a convicted drug felon. Rather, he argues he has no idea how he tested positive for THC. There is no evidence to suggest that the testing was done in error. Additionally, petitioner was given the opportunity to present evidence post-hearing that the medications he is on somehow caused him to test positive for THC as he alleged, but nothing was received and this administrative law judge is unaware of any medication that would produce such a result. As such, the agency acted correctly here.

CONCLUSIONS OF LAW

The agency properly determined petitioner’s FS benefits should end effective February 1, 2013 because he is a felon and failed a drug test.

THEREFORE, it is

ORDERED

The petition for review herein 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 Milwaukee,
Wisconsin, this 3rd day of April, 2013

\sKelly Cochrane
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 3, 2013.

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