



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/147967

PRELIMINARY RECITALS

Pursuant to a petition filed March 12, 2013, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to discontinue FoodShare benefits (FS), a hearing was held on April 10, 2013, by telephone.

The issue for determination is whether the agency correctly denied FS because petitioner failed a drug test.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Alma Lezama
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FS for himself and his son. He had a review in March, 2013 and reported that he was convicted of a drug felony within the past five years. Because of the conviction he was required to take a drug test for FS eligibility purposes.
3. Petitioner reported to the agency that he failed the test.

4. FS were closed effective March 1, 2013. Immediately after the hearing the agency took action to reopen FS for petitioner's son. A \$168 FS supplement was issued for March for petitioner's son, and he will continue to receive \$168 for April and beyond.

DISCUSSION

If a person has been convicted of a drug-related felony, he is ineligible for FS subject to state rules concerning regaining eligibility. 7 C.F.R. §273.11(m). In Wisconsin anyone convicted of a drug-related felony within five years prior to the FS application must pass a drug test to be eligible. FS Handbook, Appendix 3.19.1. If the drug test is positive, the person is ineligible for twelve months. If the person refuses to take the test, FS are denied. He can reapply and agree to take the drug test. Id., App. 3.19.1.1.

Because petitioner failed the drug test he is now ineligible for FS for twelve months. The Division of Hearings and Appeals does not have authority to make an exception to the rule.

The hearing was worthwhile for petitioner nevertheless because the inaction on his son's FS eligibility came to light. I checked petitioner's case this morning and his son is eligible again. \$168 for March has been issued and should be on petitioner's Quest card. Because the county has corrected the case for petitioner's son and I cannot change the result for petitioner himself I will dismiss the appeal.

CONCLUSIONS OF LAW

The county correctly denied FS for petitioner because he failed a drug test.

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 11th day of April, 2013

\sBrian C. Schneider
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 11, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability