



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148123

PRELIMINARY RECITALS

Pursuant to a petition filed March 19, 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 May 21, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency correctly discontinued FoodShare benefits because Petitioner 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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner applied for FS on February 13, 2013. Petitioner had previously applied for FS in February 2012. At that point a drug test was mandatory because Petitioner had been convicted of a drug felony in June of 2009. Petitioner's February 2012 application was denied because his drug test was positive and Petitioner deemed ineligible for FS for 12 months commencing March

2012 through February 2013. Thus Petitioner's February 2013 FoodShare application was denied for February 2013 but it was approved for March 2013.

3. Because Petitioner was convicted of the 2009 felony drug conviction Petitioner was again required to take a drug test for the February 2013 FoodShare application. That test was positive for opiates.
4. Petitioner was notified that his FoodShare were being discontinued effective April 1, 2013 because of the failed drug test.
5. Among the medications taken by Petitioner is vicodin. He does not have a current prescription for vicodin. It is noted to be an opiate per <http://www.drugs.com/vicodin.html>.

DISCUSSION

If a person has been convicted of a drug-related felony, s/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 gain eligibility. FoodShare Wisconsin Handbook, §3.19.1. A new applicant can be tentatively approved for FoodShare if s/he agrees to take a drug test but benefits are discontinued if they fail the drug test. Id. If the drug test is positive, the person is ineligible for twelve months. If the person refuses to take the test, FS are denied. S/he can reapply and agree to take the drug test. Id., § 3.19.1.1. Thus, under these rules Petitioner cannot be eligible for FS unless he passes a drug test.

The record was held open to give Petitioner an opportunity to obtain information from medical providers to explain the positive results of the drug test. The Division of Hearings and Appeals did not receive additional information. Petitioner's own testimony was that he had an old prescription for vicodin and may have taken that. Regardless, he has no current prescription for it and that he is taking a several year old prescription is really not credible.

Petitioner has not passed a drug test, thus the county agency correctly discontinued Petitioner's FoodShare.

CONCLUSIONS OF LAW

The county correctly discontinued Petitioner's FoodShare because Petitioner did not pass a required drug test.

THEREFORE, it is

ORDERED

That this appeal 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 13th day of June, 2013

\sDavid D. Fleming
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 June 13, 2013.

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