



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/154622

PRELIMINARY RECITALS

Pursuant to a petition filed January 8, 2014, 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 February 5, 2014, by telephone.

The issue for determination is whether petitioner can be eligible for FS after failing a drug test.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Katherine May
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 applied for FS on November 21, 2013 and FS were opened for him. Because he reported that he had a felony drug conviction he was scheduled for a drug test.
3. On December 12, 2013, the agency was notified that petitioner tested positive for cocaine in his scheduled drug test.

4. By a notice dated December 13, 2013, the agency informed petitioner that FS would end January 1, 2014 because he failed the test.

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 gain eligibility. FS Handbook, Appendix 3.19.1. If the drug test is positive, the person is ineligible for twelve months.

Because petitioner failed the drug test the agency had no choice but to discontinue his FS. In fact, the agency probably erred by granting FS in the first place because a person with a drug conviction must first pass the test to gain eligibility.

CONCLUSIONS OF LAW

Petitioner is ineligible for FS because he failed a mandatory drug test after applying.

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, Room 651, 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 7th day of February, 2014

\sBrian C. Schneider
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 February 7, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability