



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/154970

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 23, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Dunn County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 17, 2014, at Menomonie, Wisconsin.

The issue for determination is

There appeared at that time and [REDACTED] the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Serna Stipek

Dunn County Department of Human Services  
808 Main Street  
PO Box 470  
Menomonie, WI 54751

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Dunn County.
2. The petitioner was convicted of a felony drug conviction on February 15, 2012.
3. The petitioner had an unconfirmed positive test for THC on October 28, 2013.

4. A drug test conducted by █████ █████, Inc., on December 16, 2013, was reportedly positive for methamphetamine. There is no evidence concerning the actual level of that substance in the petitioner's body. Nor is there evidence that a laboratory confirmed the result.
5. The county agency ended the petitioner's FoodShare benefits as of January 1, 2014.

### DISCUSSION

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, requires those convicted of a drug felony committed after August 22, 1996 to submit to and pass a random drug test to obtain or retain eligibility for food stamps. Those who fail the tests are ineligible for one year. *FoodShare Wisconsin Handbook*, § 3.19.1. The petitioner is a drug felon who applied for FoodShare on October 28, 2013. A test given that day indicated an unconfirmed positive for THC. He was then tested by █████ █████, a counseling center. █████ █████ submitted a cover sheet indicating that the result was positive for "mamp," or methamphetamine.

It appears that this was a preliminary finding because the sheet indicates that the test was sent into the "lab." There is no documentation showing why the counseling center considered the test positive. Nor is there any evidence concerning whether the laboratory confirmed the test. The agency has the burden of proving by the preponderance of the credible evidence that the petitioner failed a drug test. Although the information it submitted raises a reasonable suspicion, it simply is not probative enough to meet the agency's burden of proof. Therefore, the agency cannot remove the petitioner from the FoodShare program for one year.

In making this decision, I remind the petitioner that he can still be removed from the program if he fails a future drug test.

### CONCLUSIONS OF LAW

The county agency cannot disqualify the petitioner from the FoodShare program because it has failed to prove by a preponderance of the credible evidence that he failed a drug test.

**THEREFORE, it is**

### ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner into the FoodShare program retroactive to January 1, 2014, and to take all steps necessary to ensure that he receives a supplemental allotment for benefits he has not received since then.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of April, 2014

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\sMichael D. O'Brien  
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 April 25, 2014.

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