



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FOO/164899

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on April 14, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's one-year drug test sanction should stand.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

By: Redact

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redact) is a resident of Milwaukee County.
2. Petitioner was convicted of a drug felony in 2013.
3. Petitioner applied for FS benefits, and was required to be tested for drugs; petitioner tested positive for THC, and was determined ineligible for FS benefits as of April 1, 2015.

4. Petitioner received a one-year sanction as a result of the positive drug test.

DISCUSSION

Based on the petitioner's criminal conviction history he was required to take a drug test, which he failed. The sanction for a failed test by a felon is a one-year bar from FS. *Id.*, § 3.20.1. The federal code allows for sanction of a drug felon:

(m) Individuals convicted of drug-related felonies. An individual convicted ... of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance ... shall not be considered an eligible household member...

7 C.F.R. §273.11(m).

FS policy further states that:

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. If the individual passes this test, s/he remains eligible. If the applicant refuses to take a drug test, s/he will remain ineligible for FS until s/he agrees to take a drug test.

If the drug test result is positive, the individual is ineligible for 12 months from the next possible payment month. If the drug test result is negative, the individual remains eligible. Do not retest the individual at review.

FoodShare Handbook § 30.20.1.1.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant him relief from the program sanctioning regime. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law, he meets all requirements for the imposition of an FS sanction, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

The respondent properly sanctioned petitioner following his positive drug test for a period of one year.

THEREFORE, it is

ORDERED

Petitioner's appeal is hereby dismissed in its entirety.

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 12th day of May, 2015.

\sPeter McCombs
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 May 12, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability