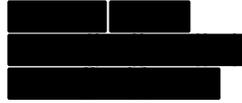




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/170348

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Shawano County Dept. of Social Services to deny FoodShare benefits (FS), a hearing was held on December 16, 2015, by telephone.

The issue for determination is whether petitioner should be sanctioned for one year for a failed blood test.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Shawano County Dept. of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Shawano County.
2. Petitioner was receiving FS in the summer, 2015. Her case transferred to Shawano County in August, and while processing the transfer petitioner told the Shawano worker that she had a drug conviction, and that she likely would fail a test then because of prescription drugs she was taking. On August 19 the county requested verification of a drug test.
3. On August 20 petitioner provided a copy of a blood test from August 12, 2015 in which she tested positive for Amphetamines and Buprenorphine.

4. By two notices dated September 10, 2015, the county denied petitioner's FS application and imposed a one-year sanction for failing a drug test. On September 21 petitioner contacted the county about the drug sanction. She was told that she could provide a doctor's statement explaining the positive test.
5. Due to a mix-up between petitioner and her doctor, petitioner did not provide the doctor's record to the county until October 1, 2015. The record confirmed that petitioner was taking prescription drugs containing Amphetamines and Buprenorphine.
6. Petitioner has income that likely would cause FS ineligibility.

DISCUSSION

If a person has been convicted of a drug-related felony, she 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 3.20.1. If the drug test is positive, the person is ineligible for twelve months. If the person identifies prescription drugs that might cause a positive test, and the test is positive for those drugs, the person should not be sanctioned if she provides a statement from a doctor or pharmacy explaining the positive test. The explanation must be filed within 30 days of the positive test or the sanction becomes effective. Handbook, App. 3.20.1.1.

In this case petitioner provided, on August 20, a copy of her blood test. Even if I use August 20 as the date to begin the time for following up with a doctor's statement, petitioner still did not provide the statement until 41 days later. Under the policy the sanction becomes effective.

The problem is that I cannot find anything in the record where petitioner was told that she had a deadline to provide the doctor's statement. I reviewed case notes from petitioner's record. The September 10 notice was generated immediately after the positive test was entered into the computer data base. That notice does not say that a doctor's statement can be provided. On September 21, 2015 petitioner contacted the county about the notice and was told then that she could provide the doctor's statement. She provided it ten days later (she thought the doctor's office was going to fax it to the county but instead it mailed the statement to petitioner, and she brought it in immediately).

No earlier case note suggests that petitioner was told that she could provide a doctor's statement or the deadline for doing so. No written notice provides that information.

Under these circumstances I conclude that petitioner should not be sanctioned for one year. She can reapply for FS at any time. As noted, her current income would make her ineligible anyway.

CONCLUSIONS OF LAW

Petitioner should not be sanctioned from receiving FS for one year because she was not informed that she could provide a doctor's statement to explain her positive drug test until after the sanction was imposed, and she provided the statement in a timely manner thereafter.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to rescind the one-year drug test sanction imposed against petitioner effective September 1, 2015. The county shall do so within ten days of this decision.

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 18th day of December, 2015

\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 December 18, 2015.

Shawano County Department of Social Services
Division of Health Care Access and Accountability