

Decision of the Japan Anti-Doping Disciplinary Panel

Name of Athlete: X
Sport: Skiing /IPC Nordic Cross-Country

Pursuant to the decision of the Hearing Panel convened for Case 2013-006, the Japan Anti-Doping Disciplinary Panel has made the following decision with respect to this case.

May 7, 2014
Japan Anti-Doping Disciplinary Panel
Chair: Toshio Asami

Case 2013-006: Hearing Panel Decision

The Hearing Panel for Case 2013-006, which is composed of the following members appointed by the Chair of the Japan Anti-Doping Disciplinary Panel pursuant to Article 8.3.2 of the Japan Anti-Doping Code (the “Code”), has made the following decision concerning this case pursuant to the results of the hearing held on April 24, 2014 (the “Hearing”).

May 7, 2014
Kazuki Shishido _____
Toshio Asami _____
Masahiro Murayama _____

Decision:

- A violation of Article 2.1 of the Code is found to have occurred.
- In accordance with Article 9, Article 10.1.1 and Article 10.8 of the Code, all of the individual results of the Athlete obtained from the date of sample collection until the commencement date of the provisional suspension period (including the competition results of the 2014 Japan Para Cross-Country Skiing Championships and the 16th All-Japan Disabled Cross-Country Skiing Championships) shall be disqualified, and all medals, scores and awards acquired during the period above shall be forfeited.
- In accordance with Article 10.4, Article 10.9.1 and Article 10.9.2 of the Code,

ineligibility shall be imposed for a period of three months starting from April 7, 2014.

Reasons:

- The substance “methylephedrine” that was detected in in-competition testing on February 8, 2014 is designated as a prohibited substance under “S6. Stimulants” in The 2014 Prohibited List International Standard (the “Prohibited List”), and it constitutes a “prohibited substance” as prescribed in Article 2.1 of the Code. In response to this, the Athlete neither requested an analysis of the B Sample, nor contested the test results or the process and procedure that led to those results at the provisional hearing and the hearing.
- Accordingly, the Athlete can be found to have violated Article 2.1 of the Code (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample) in this case. Therefore, it is appropriate to consider that, in accordance with Article 9, Article 10.1.1 and Article 10.8 of the Code, all the individual competition results obtained from the date of sample collection until the commencement date of the provisional suspension period (including the competition results of the 2014 Japan Para Cross-Country Skiing Championships and the 16th All-Japan Disabled Cross-Country Skiing Championships) shall be disqualified, and all medals, scores and awards acquired during the period (if any) above shall be forfeited.
- Furthermore, the substance above that was found in this case, while on the one hand constituting a “prohibited substance,” also is a “specified substance” under the Prohibited List. Based on the testimony of JADA, the Athlete himself, the Athlete’s spouse and the person related to the sports organization (general manager of the cross-country ski competition of the Ski Association of Japan for the Disabled), the documents submitted (the purchase history, etc. of cold medication at on-line shops), the documents submitted by JADA (the Doping Control Form, etc.), as well as the entire import of the Hearing, the following facts can be found.
 - (1) The methylephedrine that was found in this case is recognized to be included in the “cold medication” which the Athlete purchased and took in order to help relieve his initial symptoms of cold. This is also evidenced by the facts that there is a description of such “cold medication” in the contents of the filing by the Athlete in the Doping Control Form, and that there do not exist any particular circumstances that the Athlete made false statements or concealed any facts.
 - (2) It is recognized that the Athlete took such substance for therapeutic purposes

as mentioned above. In this regard, considering the purposes and manner of taking this substance asserted by the Athlete, it is recognized that methylephedrine in this case was not taken for the purposes of enhancing sport performance or masking the use of a performance-enhancing substance, and neither has any specific countervailing claim been raised by JADA.

- (3) The Athlete claims that around 2012 he confirmed, through a pharmacist familiar with the area of doping, whether or not there was the possibility that the therapeutic medication for anxiety neurosis, which he took regularly, fell under a prohibited substance. However, the Athlete can be found to be in fault in that he mistakenly understood that cold medication does not fall under a prohibited substance and took this without care and without confirming with a doctor or a pharmacist or the sports federation to which he belonged.

According to the statements made by the Athlete and the Athlete's spouse, it is asserted that the Athlete, having vision disability, needs to solely rely on auditory information in order to obtain information related to prohibited substance, and needs to obtain information through the method of reading out loud the portion of the text, even when searching prohibited substance, etc. via the internet, and had no opportunity to become aware of the existence of so-called "inadvertent doping" through the administration of over-the-counter medication.

In this regard, it cannot be recognized that that lectures or the calling of attention for the prevention of "inadvertent doping" were proactively implemented towards the Athlete, even according to the statements of JADA or the person related to the sports organization, neither is it necessarily possible to say that the anti-doping self-enlightenment books issued and distributed by JADA or the sport federation to which the Athlete belongs, or the website, etc. prepared and disclosed by the same, were prepared by taking athletes with vision disability into account.

However, since anti-doping rules are intended to be fairly applied regardless of the existence or non-existence of vision disability and it is interpreted that athletes with vision disability are obliged to make careful choices with respect to the substances they take (please refer to the case of CAS 2012/A/2789), and in addition, the Athlete in this case underwent confirmation with the pharmacist, etc. with the perception of the possibility of doping with respect to the medicine which he regularly took, it must be said that the Athlete cannot avoid the indication that the possibility that an over-the-counter medication could fall under a prohibited substance should have occurred to him.

- Comprehensively considering the Athlete's negligence based upon the

circumstances above and the fact that this was a first violation, it is appropriate to impose a three month period of ineligibility pursuant to Article 10.4 of the Code.

- In this case, the Athlete has been under a provisional suspension pursuant to Article 7.6.1 of the Code from the April 7, 2014 notice date until the time of the present decision (a provisional hearing was held on April 24, 2014 concerning the relevant provisional suspension). Accordingly, pursuant to Article 10.9.2 of the Code, the commencement date for the period of ineligibility shall be April 7, 2014.

Based on the foregoing, we have made our decision as stated above.

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