



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/142733

PRELIMINARY RECITALS

Pursuant to a petition filed July 31, 2012, 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 September 11, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is eligible for replacement of food destroyed by a fire at her residence.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner receives monthly FoodShare (FS) benefits, in the amount of \$1,154.00, on the 9th of each month.

3. On or about June 20, 2012, petitioner's food was destroyed by a fire, which displaced petitioner and her family.
4. On June 26, 2012, petitioner applied for emergency assistance, a W2 program, with the county agency.
5. On or about July 31, 2012, petitioner inquired about food replacement benefits through the FS program. She was informed that she needed to have provided verification of the fire within 10 days after the event.
6. On July 31, 2012, petitioner filed the instant Request for Fair Hearing.

DISCUSSION

Food purchased with FoodShare benefits and destroyed in a household misfortune can be replaced up to the actual amount destroyed, but not more than the monthly allotment issued for that month, whichever is less. See, *FoodShare Wisconsin Handbook* § 7.1.1.5; 7 C.F.R. § 274.6(a)(3). The household must report the loss within 10 days, and file a request for replacement FS with the Department's agent. *FoodShare Wisconsin Handbook* § 7.1.1.5.

A replacement issuance shall be provided only if a household:

1. Reports the loss orally or in writing to the agency within 10 days of the date that the loss occurred.
2. Completes a "Request for Replacement FoodShare Benefits: (F-0330). This can be completed and dropped off at the agency, mailed, or faxed to the agency, but must be received by the agency within 10 days of when the household reports the loss.

FoodShare Wisconsin Handbook § 7.1.1.5 (1) and (2).

A household misfortune includes, but is not limited to, a disaster, fire or flood, or like event causing destruction of food. 7 C.F.R. § 274.6(f)(2). Finally, the agency must determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. 7 C.F.R. § 274.6(f)(2). There are no other stated limitations as to what constitutes a "household misfortune".

This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit.

7 C.F.R. § 274.6(f)(2).

Arguably, petitioner timely reported the loss to the agency when she applied for emergency assistance. Case Comments at the time of application specifically state,

Client has been residing with friends and staying in a hotel with the help of Red Cross.
Client states that she lost everything she had in the fire.

Exhibit 4. According to the petitioner, she had no idea that she could receive replacement for her food destroyed in the fire. She was not aware of this when she applied for emergency assistance. Still, her act of applying for emergency assistance should have surely placed the agency on notice that her food was included when she "lost everything she had in the fire."

Petitioner's fire has clearly met the definition of a household misfortune, and she arguably satisfied the first portion of the notice requirements by informing the agency of her loss, even if said notification was not provided in furtherance of a request for FS replacement.

The second part of the notice requirements mandate that petitioner must complete a Request for Replacement FoodShare Benefits form within 10 days of providing notice of the loss. This she did not do. Again, petitioner argues that she did not know that replacement benefits were available, so, she argues, she did not know to submit an application form.¹

Administrative Law Judges do not have equitable powers, and are required to apply laws, rules, and regulations as written. Plainly speaking, the petitioner does not qualify for replacement FS benefits since she did not comply with FS rules. While I empathize with her situation, ignorance of program requirements is not an extenuating circumstance that would permit me to overlook her failure to abide by FS rules.

CONCLUSIONS OF LAW

Petitioner is not eligible for replacement of food destroyed by a fire at her residence due to petitioner's failure to complete and submit a Request for Replacement FoodShare benefits form.

THEREFORE, it is ORDERED

The petition 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.

¹ The time frames imposed by the FS handbook are likely short due to the fact that the petitioner is only entitled to replacement of the food destroyed – it is not an automatic replacement of the full amount of petitioner's monthly benefits. After a month has passed, the likelihood that petitioner could reasonably recall what food she had left at the time of the fire, is greatly diminished. Petitioner received her June benefits on June 9, 2012, and spent the entire balance of \$1,154.00 by June 10, 2012. The fire occurred ten days later. Forty days after that, petitioner requested replacement benefits from the county agency. It is now approximately three months after the fire, and swearing to what was in her cupboards, refrigerator, and/or freezer on June 20, 2012, would be a tall order.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be 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 20th day of September, 2012

Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 20, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability