



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FBT/143164

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 19, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner may be given FS benefits of \$551, as replacement for those debited from her FS Electronic Benefits Transfer (EBT) card in August, 2012.

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: Katherine May, HSPC Sr.

Milwaukee County Department of Human Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner has been an ongoing recipient of FS benefits throughout 2012.

3. The petitioner was eligible for \$818 in FS for August, 2012, and that amount was electronically placed in her FS account on August 5, 2012. The petitioner made three purchases with her FS card on August 5, and two purchases with the card on the morning of August 7. After these purchases, a balance of \$551.57 remained on the card.
4. From the afternoon of August 7 through August 8, 2012, purchase transactions occurred on the petitioner’s FS card that ran the balance down to zero.
5. On August 15, 2012, the petitioner reported to the agency that her FS card had been stolen. She asserted that she did not make the \$551.57 in purchases that occurred during the evening of August 7 and on August 8, 2012. She also denied giving her PIN number (needed to use the card) to anyone on those dates.

DISCUSSION

Food stamp program regulations and state rules provide for the replacement of FS benefits under certain circumstances. See, 7 C.F.R. §§ 274.6. For the EBT system, the regulations provide that the State agency is responsible for benefits drawn from an account *after the household has reported that the card has been lost or stolen*. Such benefits are to be replaced. However, benefits will not be replaced due to loss or theft of the EBT and PIN (personal identification number) prior to the point in time that the recipient reports the loss to the Department. *Food Share Wisconsin Handbook*, §7.2.1, cross-referencing the Department’s *CWW Process Help*, §80.3.6. The recipient is required to report the loss, theft or damage of the card immediately:

80.3.6 Benefit Replacement

The EBT Card and PIN responsibility statement specifies that benefits will not be replaced. The client signs this statement prior to initial issuance of EBT benefits. Benefits will not be replaced if lost as a result of the loss or theft of the Wisconsin QUEST card and PIN up to the point in time that the recipient reports the loss to recipient customer service. Benefits will not be replaced if lost due to fraud committed, in total or in part, by the recipient.

Benefits will be replaced if lost after the recipient or representative reports to recipient customer service that the card has been lost or stolen. Benefits will also be replaced if lost due to system errors or malfunctions.

Id., *Process Help*, §80.3.6.

The Department’s policy instruction is consistent with the federal rule:

(2) An immediate hold shall be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The State agency shall implement a reporting system which is continually operative. Once a household reports that their EBT card has been lost or stolen, the State agency shall assume liability for benefits subsequently withdrawn from the account and replace any lost or stolen benefits to the household. The State agency or its agent shall maintain a record showing the date and time of all reports by households that their card is lost or stolen.

7 C.F.R. §274.6(b)(2).

Unfortunately for the petitioner, the controlling fact in this case is the timing of the petitioner's contact to the agency on August 15 to report the theft of her EBT card. The parties agree that she appeared at the agency on August 15, after she realized that something was wrong. The agency's computer print-outs show the date and time of the questionable transactions on August 6 - 8. Because the theft occurred prior to report of the theft to the agency, I conclude that the stolen FS amounts referenced in the Findings above cannot be replaced by the agency.

CONCLUSIONS OF LAW

1. The petitioner is not entitled to replacement of the FS stolen from her between August 7 (p.m.) and August 14, 2012, because she did not report theft of her FS card until August 15, 2012.

THEREFORE, it is

ORDERED

That the petition is 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.

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 26th day of September, 2012

Nancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee County Department of Human Services - email
Department of Health Services - email



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The preceding decision was sent to the following parties on September 26, 2012.

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