



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FBT/143427

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 25, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on October 24, 2012, at Janesville, Wisconsin. At the request of petitioner, a hearing set for September 19, 2012 was rescheduled.

The issue for determination is whether petitioner was entitled to reimbursement for FS benefits lost when his Electronic Benefits Transfer (EBT) card was stolen.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Mary Donahue, ES Supervisor  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. The petitioner received FS benefits for a household of one.

3. The petitioner was incarcerated in the Rock County jail from December 23, 2011 to his release on May 29, 2012.
4. The petitioner and his POA failed to timely report petitioner's incarceration to the county agency.
5. On April 2, 2012, the county agency discovered that petitioner had been incarcerated without Huber Law privileges since December 23, 2011.
6. The petitioner's ex-girlfriend was [REDACTED]
7. On or about August 15, 2012, the petitioner reported to the county agency that his [REDACTED] [REDACTED] called the county agency to report his EBT card stolen, received his new EBT card, and used his FS benefits from that card while he was in jail.
8. The petitioner did not establish when the alleged theft took place or the amount of FS on his EBT card at the time of the theft.
9. The Rock County District Attorney's (DA's) Office issued an October 16, 2012 letter to the petitioner stating that the DA had issued a criminal complaint charging [REDACTED] L. [REDACTED] with six counts of fraudulent use of petitioner's credit card for incidents that happened on June 18, 2012, June 19, 2012, July 10, 2012, August 9, 2012, and August 10, 2012.
10. The county agency denied the petitioner's request for replacement of the FS on his EBT card prior to his May 29, 2012 release from jail, due to the alleged theft by [REDACTED] [REDACTED]

### DISCUSSION

FS benefits are issued to an EBT card which, in conjunction with a personal identification number (PIN), can be used to gain access to the FS benefits issued to the card. FoodShare program regulations and state administrative rules provide for the replacement of lost or stolen FS benefits under certain circumstances. See, 7 C.F.R. §§ 274.6. and 274.12(g). 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. 7 C.F.R. § 274.12(g)(5)(iv). 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**. The regulation controlling the replacement of stolen FS is found in the WI Admin Code, §DHS 252.18, which states in pertinent part:

**Liability for lost benefits.** Benefits will not be replaced if lost as a result of the loss or theft of the EBT 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. The department shall assure the replacement of benefits lost after the recipient or representative reports to recipient customer service that the card has been lost or stolen. The department also shall assure the replacement of benefits that are lost due to system errors or malfunctions. A recipient shall follow the dispute resolution process specified in [s. DHS 252.22](#) if he or she believes that benefit replacement is warranted.

The Department policy relating to the replacement of stolen FS is very similar to the above regulation. It is found in the *Process Help Guide* (07-31-09), §80.3.6, which is found in the CARES Worker Web (CWW), and it states in pertinent part:

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.

In the instant case, petitioner reported the theft of his EBT card to the county agency on August 15, 2012 which was after the period that petitioner alleged that Ms. ██████ used his replacement EBT (prior to his May 29, 2012 release from jail). Under these circumstances, neither the county nor the state is responsible for restoring the lost benefits. While the petitioner may believe that it is unfair to make him report something to the county agency that he did not have any knowledge of until after his FS were gone, I do not have the authority to ignore existing administrative rules and policies.

As dicta, the petitioner may wish to pursue reimbursement from his ex-girlfriend in some other legal venue perhaps with some assistance of the District's Attorney's Office. See Finding of Fact #9 above.

**CONCLUSIONS OF LAW**

Where petitioner reported the theft of his EBT card after the FS benefits issued to the card had been spent, the county agency was not responsible for replacement of those stolen FS benefits.

**THEREFORE, it is ORDERED**

The petition for review herein be and the same 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.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and 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, 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 23rd day of November, 2012

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\sGary M. Wolkstein  
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 November 23, 2012.

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