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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/145417

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 23, 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 December 20, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether evidence has been submitted that demonstrates that Petitioner meets the standards necessary for replacement of food purchased with FoodShare benefits due to the loss of food after a power outage.

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: Belinda Bridges

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On November 12, 2012 Petitioner contacted the agency to ask how to receive replacement food share benefits because of food lost in a power outage. Petitioner was told to get verification of the outage from the energy company and to take that to the agency offices at 1220 W. Vliet.
3. On Wednesday, November 21, 2012 Petitioner did appear at the agency offices at 1220 W. Vliet to complete a request form for the replacement benefits.
4. The letter from the energy company indicated that the power outage occurred on November 10, 2012.
5. The agency denied Petitioner's request for replacement benefits because her completion of the required form was not done within 10 days of the date of the loss.

### 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. A form, a "Request for Replacement FoodShare Benefits" ( [F-00330](#) ), must be received within 10 days of the date of the loss. *FoodShare Wisconsin Handbook* § 7.1.1.5. 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". Nonetheless:

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).

#### **7.1.1.5 Replacement Issuance for Destroyed Food**

Replace food purchased with FoodShare benefits and destroyed in a household misfortune up to the actual amount destroyed but not more than the monthly allotment actually issued to the household that month, whichever is less.

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 the loss occurred.
2. Completes a "Request for Replacement FoodShare Benefits" ( [F-00330](#) ). 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.

A replacement issuance must be provided to the household within 10 days after report of the loss. Verify the household misfortune through the fire department, police department, a community organization such as the Red Cross, a collateral contact or home visit, etc.

Deny or delay a replacement issuance if available documentation indicates that the household's request for replacement appears to be fraudulent.

Inform the household of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

A household may experience such a loss more than once. There is no limit to the number of replacement issuances.

Here the power outage was on November 10, 2012; Petitioner reported the outage and FoodShare loss at to the agency via telephone call on November 12, 2012 and was informed that she needed to obtain verification from the electric company. She obtained that verification and completed the request form for replacement benefits on November 21, 2012. As this was after 10 days of that that of the alleged loss the agency denied the replacement. Petitioner would like the Division of Hearings and Appeals to make an exception and order the replacement.

The Division of Hearings and Appeals must, however, limit its review to the law set forth in statutes, federal regulations, administrative code provisions and program policies in accord with these laws. Accordingly, the Division of Hearings and Appeals does not have authority to ignore the rules and create an exception as requested by Petitioner.

### **CONCLUSIONS OF LAW**

That the agency correctly denied Petitioner's request for replacement food share benefits as the required request was not completed within 10 days of the date of the loss and the DHA does not have authority to ignore program rules.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 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 Milwaukee,  
Wisconsin, this 16th day of January, 2013

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\sDavid D. Fleming  
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 January 16, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability