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[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

FOO/146029

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 18, 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 January 16, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly declined to replace the FS issued to the petitioner's FS cards for November and December, 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  
Madison, Wisconsin 53703

By: Mary Hartung, IM-Advanced  
Milwaukee Enrollment Services  
1220 W Vliet St  
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 had an ongoing FS case throughout 2012. On November 13, 2012, the petitioner reported to the Department that his FS card (#...8615) was stolen. The Department canceled that card and mailed a new card (#...1749) to the petitioner on November 14, 2012.

3. The petitioner's \$148 November 2012 FS allotment was electronically placed in his account on November 2, 2012. *No* purchases were made on card #...8615 in November, which the petitioner reported stolen on November 13.
4. The entire November allotment was spent, using card #...1749, on November 16 – 30, 2012. The purchases were made at Golden Mid-Town Food, Mobil gas station(s), Walgreens, Kilbourn Supermarket, Brothers Food Inc., Midtown II, Pick-N-Save, Moes Foods, and Family Dollar, all in Milwaukee.
5. The petitioner's \$200 December 2012 FS allotment was electronically placed in his account on December 2, 2012. The entire December allotment was spent, using card #...1749, from December 2 – 10, 2012. The purchases were made at Aldi 64087, Pick-N-Save, and VK Citgo, all in Milwaukee, and a Woodman's Food Market in Menomonee Falls.
6. On **December 14**, 2012, the petitioner reported to the Department that he had not received the November 14 card, and that he had changed his address. On the same date, the Department deactivated card #...1749.
7. The petitioner subsequently received another FS card, and changed his six-year-old PIN number on January 3, 2013. The petitioner requests replacement of his FS allotments for November and December, 2012, which he asserts were stolen.

### 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 **December 14** to report the theft of his second EBT card. The agency's computer print-outs show the date and time of the questionable transactions on **November 16 – December 10, 2012**. 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 allegedly stolen from him between November 16 and December 10, 2012, because he did not report theft of his FS card #...1749 until December 14, 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 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 30th day of January, 2013

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\sNancy J. Gagnon  
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 30, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability