



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

FOO/146786

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2013, 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 February 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied reimbursement of stolen FS benefits to the Petitioner.

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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 2, 2013, the agency issued FS benefits of \$556 to the Petitioner.

3. On January 7, 2013, the Petitioner used her FS card at a grocery store. On January 9, 2013, the Petitioner returned to the same grocery store and attempted to use the FS card. It showed insufficient funds available.
4. On January 16, 2013, the Petitioner contacted the agency to report stolen benefits totaling \$474.65. The Petitioner also contacted the grocery store owner. The grocery store owner reviewed surveillance tapes and determined two store employees used the Petitioner's FS card number to obtain Petitioner's FS benefits. The agency contacted the grocery store owner who verified the Petitioner's statements. He stated that two employees had been terminated for stealing the Petitioner's benefits. He further stated that he contacted the Milwaukee Police Department and sent the surveillance tapes to them.
5. The Petitioner was informed by the agency on or about January 16, 2013 that she must obtain a police report to be reimbursed for the stolen FS benefits.
6. The Petitioner attempted to obtain a police report from the Milwaukee Police Department on numerous occasions.
7. The Petitioner obtained a police report dated February 19, 2013 indicating that the case involving her FS benefits is still pending.
8. On January 22, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

According to ForwardHealth/QUEST Card policies, if a QUEST Card is lost, stolen or damaged, the client is to call the Customer Service ARU at [REDACTED] to report it. A new card is to be mailed to the client on the next business day. No one will be able to use the card once it is reported missing. See ForwardHealth policy at <http://www.dhs.wisconsin.gov/foodshare/ebt/general/questfaq.htm>.

In this case, the agency worker testified that it is policy to require the client to obtain a police report for a stolen card. I was unable to find that policy but note that the Petitioner's card was not stolen. Rather, the Petitioner's benefits were stolen through illegal use of her pin number. The Petitioner testified credibly that she has attempted to get the police department to investigate and issue a police report. The agency verified through the store owner that the benefits were stolen and that the store owner also has been unable to get the police department to investigate the matter.

The Petitioner's testimony is credible and the information that the benefits were stolen from her card is verified by the store owner and by surveillance tapes. I am not aware of a written requirement that a police report be filed though such requirement makes sense when a client alleges benefits were stolen. In this case, the Petitioner testified credibly that she has attempted to obtain a police report but after more than a month, the case is still pending. Even without a police report, the Petitioner's testimony and the evidence is credible that the benefits were illegally taken from her card. Based on the information provided, the agency must reimburse the Petitioner for \$474.65 in benefits stolen from her card.

CONCLUSIONS OF LAW

The agency must reimburse the Petitioner \$474.65 for FS benefits stolen from the Petitioner's card.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to reimburse the Petitioner in the amount of \$474.65 for FS benefits stolen from her card on or about January 7 and 8, 2013. The Petitioner shall be reimbursed by the agency within 10 days of the date of this decision.

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 15th day of March, 2013

\sDebra Bursinger
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 March 15, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability