



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/147537

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 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 March 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is entitled to replacement of stolen FS.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Alma Lezama

Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He is a recipient of FS.
2. Sometime between January 3 and January 7, 2013 someone, alleged to be petitioner's ex-girlfriend, called EBT Customer Service, cancelled petitioner's EBT card, and requested a new EBT card.

3. From January 7, 2013 to February 6, 2013 a new EBT card issued under petitioner's name was used without petitioner's knowledge or consent.
4. On February 7, 2013 petitioner came to his local FS agency to find out why his EBT card was not working. At that time the agency produced an EBT transaction history showing that on January 7, 2013 a new card was issued under his name, that a PIN change occurred, and that transactions occurred (showing approximately \$280.91 in FS spent) from January 7, 2013 to February 6, 2013. See Exhibit 4.
5. On February 21, 2013 petitioner filed a police report regarding the stolen FS. See Exhibit 5.

### DISCUSSION

Beginning in 1999 the department began to provide an EBT card to FS recipients. The card allows the FS group to access FS benefits through the EBT account instead of using paper documents. See Wis. Adm. Code, §HFS 252.04.

In this case, petitioner asserts that his ex-girlfriend, called EBT Customer Service, cancelled petitioner's EBT card, and requested a new EBT card. At that time, petitioner had a P.O. Box. which the ex-girlfriend had access to, and from which he alleges she must have retrieved the new card she requested.

Wis. Adm. Code, §HFS 252.18 discusses liability for lost FS benefits and provides 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....

This case does not qualify as a lost or stolen card or PIN. FS recipients are required to safeguard their cards and PINs; however the alleged ex-girlfriend was able to get a new card on petitioner's account without having that card or PIN. She would have had to only know his date of birth, address and/or Social Security number in order to request the new card. Safeguarding that information is not a requirement for FS, but is apparently all one needs to request a new card. Petitioner did not know that the EBT card he had was inoperable until he went to use it on February 7. He then went to the agency and discovered that that on January 7, 2013 a new card had been issued under his name, that a PIN change occurred, and that transactions occurred (showing approximately \$280.91 in FS spent) from January 7, 2013 to February 6, 2013. He also then got his EBT account secured with a password. According to the EBT Systems Guide, the password prevents somebody from ordering or cancelling a card or changing the PIN through eFunds customer service. See *DHS EBT Process Help Guide* §80.4.5. To allow a person to order or cancel a card and then change the PIN without knowing the PIN or any other information that may be required to be kept safe for FS purposes is a form of system error.

I conclude that the FS can be replaced. Under such unique circumstances petitioner should not be held liable for the loss.

### CONCLUSIONS OF LAW

Petitioner is entitled to replacement FS in the amount of \$280.91 as those benefits were lost due to system errors.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to issue \$280.91 replacement FS to petitioner. The county shall do so within 10 days 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 11th day of April, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 11, 2013.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability