



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FBT/147721

PRELIMINARY RECITALS

Pursuant to a petition filed March 1, 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 April 3, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner may be given FS benefits of \$200, as replacement for those debited from his FS Electronic Benefits Transfer (EBT) card in March, 2013.

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: Katherine May, HSPC Sr.
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 been an ongoing recipient of FS benefits for at least one year through March 2013.

3. The petitioner was eligible for \$200 in FS for March, 2013, and that amount was electronically placed in his FS account on March 12, 2013. Purchases were subsequently made with his FS card, leaving no balance on the card.
4. On March 1 and March 5, 2013, the petitioner reported to the agency that his FS card had been stolen. He asserted that he did not make the \$200 in purchases that occurred after March 1, 2013. The estranged mother of his child was aware of his PIN number at the time. She was not a member of his FS household in March 2013.

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).

The controlling fact in this case is the timing of the petitioner's contact to the agency on March 1 and March 5 to report the theft of his EBT card. The parties agree that he reported this to the agency on these dates. He did this after he realized that his wallet and EBT card were missing. He suspects that the mother of his child took these items while she was visiting him. Nonetheless, the agency allowed the March allotment to be placed on his card after the theft report date. Because the theft occurred after the report of the theft to the agency, I conclude that the \$200 in stolen FS can be replaced by the agency.

CONCLUSIONS OF LAW

The petitioner is entitled to replacement of the FS stolen from him in March 2013, due to agency error in failing to immediately deactivate the EBT card, which was reported as stolen immediately prior to the unauthorized transactions.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department with instructions to provide replacement FS for March 2013 to the petitioner in the amount of \$200 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 Madison,
Wisconsin, this 9th day of April, 2013

\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 April 9, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability