



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/151449

PRELIMINARY RECITALS

Pursuant to a petition filed August 20, 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 September 11, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner's request for replacement FS in July, 2013, due to the loss of food from a failed refrigerator.

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: Belinda Bridges, 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. In July 2013, the petitioner was the casehead of an assistance group of five persons, and the July 2013 FS allotment for the household was \$535 (issued July 5, 2013).

3. On July 14, 2013, the old refrigerator in the petitioner's apartment failed. All of the food stored therein was destroyed by this event.
4. On July 29, 2013, the petitioner telephoned the agency and requested replacement FS for July, 2013, because all of the household's food had been destroyed by the refrigerator failure. The agency worker mailed the petitioner a *Request for Replacement FoodShare Benefits* form. The petitioner signed the *Request* form on July 31, 2013, and returned it to the agency on August 1, 2013. On the form, she identified the date of the food loss as July 14, 2013. Exhibit 3.
5. On August 2, 2013, the agency determined that the petitioner was not entitled to replacement of her July, 2013, FS allotment under the Department's replacement policy, due to untimely report of the loss. *See*, Exhibit 4.
6. The petitioner had an unused balance of \$9.46 on her FoodShare card on the morning of July 15, 2013, so \$9.46 must be subtracted from the amount of the loss, if the loss is replaceable.

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. *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. 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(a)(6)(ii). In addition, all losses of FS occasioned by agency error must be replaced. *See*, 7 C.F.R. § 273.17.

There is no dispute that a household misfortune occurred on July 14, 2013. However, the petitioner's first recorded report of the misfortune to the agency occurred in a telephone conversation on July 29, 2013, per the contemporaneously kept agency business record, Case Comments. *See*, Exhibit 1. This report was more than 10 days after the loss. Per the federal rule, her FS cannot be replaced.

CONCLUSIONS OF LAW

1. The agency correctly denied the petitioner's FS replacement request for July 2013, due to untimely reporting of the loss.

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 12th day of September, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
FOOreplaceLate



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 12, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability