



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152086

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 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 October 22, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's request for replacement 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: LaShon Johnson
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. In August, 2013, she was an on-going FS recipient, and the monthly FS allotment for her household was \$200.00. Exhibit 3.

2. On or about August 30, 2013, petitioner's landlord removed all of petitioner's food from her cabinets, refrigerator, and freezers while treating the premises for a roach infestation. All of the foods stored therein were destroyed by this action.
3. Petitioner testified that she reported her landlord's action to the police department, but no action was taken as a result.
4. On September 5, 2013, the petitioner contacted the county agency and requested replacement FS in the amount of \$4,692.85.
5. On September 12, 2013, the county agency determined that the petitioner was not entitled to FS replacement benefits.
6. On September 16, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of replacement FS.

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. 7 C.F.R. § 274.6(f)(2). Finally, 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(f)(2).

Here, the petitioner timely reported that she had lost food on August 30, 2013¹, by replacement request made to the agency on September 5, 2013. She informed the agency that her landlord had removed all food from her premises. While the replacement request identified \$4,692.85 in destroyed food, at hearing petitioner acknowledged that only approximately \$800.00 of the claimed loss pertained to her. The record does not reveal any substantiation of the approximately \$800.00 in lost food.

On September 12, 2013, the agency denied the request for replacement FoodShare benefits. I will uphold the denial, as the petitioner has failed to specify the actual amount of her loss and has further failed to provide any evidence of the actual loss. While she and her neighbors may have grounds to pursue a civil action against their landlord for the alleged food destruction, the petitioner has not established any error on the part of the respondent in denying the replacement FS benefits.

CONCLUSIONS OF LAW

The county agency correctly denied the petitioner's request for replacement FS.

THEREFORE, it is

ORDERED

That the petition for review herein be and hereby is dismissed.

¹ The Request for Replacement FS Benefits form indicated that the date the food was destroyed was August 30, 2013. At hearing, petitioner testified that the food was destroyed on August 28, 2013. The difference of two days is immaterial here.

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 November, 2013

\sPeter McCombs
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 November 12, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability