



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FBT/152383

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 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 29, 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: Jose Silvestre

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.
2. Petitioner's FS records indicate that petitioner's PIN was changed on September 14, 2013 at 6:30 PM. FS benefits were issued on September 15, 2013, at 12:01 AM, in the amount of \$351.00.
3. Petitioner's FS card was used on September 15, 2013, at 12:39 AM in the amount of \$125.37 and on that same date at 12:47 AM, in the amount of 223.46. Exhibit 2.

4. On September 16, 2013, petitioner reported to the agency that her FS Quest electronic benefits (EBT) card had been stolen. Exhibit 2.
5. Petitioner reported the theft to the Milwaukee Police Department on September 16, 2013.
6. Petitioner requested replacement of the stolen FS benefits on September 16, 2013. By Notice dated that same date, respondent denied the replacement request. Exhibit 2.
7. Petitioner timely appealed the negative decision on September 26, 2013.

DISCUSSION

FS benefits are issued to an EBT card which, in conjunction with a personal identification number (PIN), can be used to gain access to the FS benefits issued to the card. FoodShare program regulations and state administrative rules provide for the replacement of lost or stolen FS benefits under certain circumstances. See, 7 C.F.R. §§ 274.6. and 274.12(g). 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. 7 C.F.R. § 274.12(g)(5)(iv). 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. The regulation controlling the replacement of stolen FS is found in the WI Admin Code, §DHS 252.18, which states 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. A recipient shall follow the dispute resolution process specified in [s. DHS 252.22](#) if he or she believes that benefit replacement is warranted.

The Department policy relating to the replacement of stolen FS is very similar to the above regulation. It states, in pertinent part:

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.

See, *Process Help Guide* §80.3.6.

In the present case, petitioner reported the theft of his EBT card to the county agency two days after the card was stolen and one day after it was used. This is verified in the case comments in the CWW, which states:

09/16/2013 XMW193 General

MILES CUSTOMER SERVICE. CUSTOMER IN AGENCY TO REPORT THAT FOODSHARE BENEFITS WERE STOLEN. CUSTOMER IN AGENCY WITH POLICE INCIDENT REPORT ...

Petitioner did not report the theft of her EBT card to the county agency until after someone else had drained the benefits from her card on September 15th. Under these circumstances, neither the county nor the state is responsible for restoring the lost benefits. While the petitioner may believe that it is unfair to make her report something to the county agency that she did not have any knowledge of until after her FS were gone, I do not have the authority to ignore existing administrative rules and policies. Petitioner is encouraged to seek restitution from the individual who stole her FS benefits.

CONCLUSIONS OF LAW

The agency cannot replace the FS benefits stolen using petitioner’s Quest card because the act was done before petitioner reported the lost card.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby 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 19th 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 19, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability