



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FBT/154659

PRELIMINARY RECITALS

Pursuant to a petition filed January 10, 2014, 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 February 06, 2014, 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, Room 651
Madison, Wisconsin 53703

By: Simone Johnson

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
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.
2. On December 23, 2013 petitioner reported to the police that his wallet was stolen.
3. On December 23 and 24, 2013, several transactions were made against petitioner's FS account.

4. On December 26, 2013 petitioner reported to the agency that his Quest card had been stolen. He thereafter filed a fair hearing to recover the lost FS benefits.

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. Admin. Code, §DHS 252.04(1).

In order to access the EBT account, each FS recipient receives a personal identification number (PIN) number. Also, identifying information such as Social Security number, date of birth, and mother’s maiden name are generally needed in order to change the EBT PIN number, and the benefits cannot be used without the PIN number. Information about a person’s PIN number should not be made available to anyone other than the user of the card.

Wis. Admin. Code, §DHS 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...

Under Wisconsin law stolen FS cannot be replaced if used prior to the date of the report by the FS recipient. I therefore must conclude that the FS stolen from petitioner’s card cannot be replaced because they were utilized prior to the date petitioner reported the lost card.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

1. The agency cannot replace FS apparently stolen from petitioner’s Quest card because the act was done before petitioner reported the lost card to the agency.

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, Room 651, 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 12th day of February, 2014

\sKelly Cochrane
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 February 12, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability