



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/158663

PRELIMINARY RECITALS

Pursuant to a petition filed June 27, 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 telephonic hearing was held on July 22, 2014.

The issue for determination is whether petitioner is entitled to 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, Room 651
Madison, Wisconsin 53703

By: Katherine May, HSPC Sr.
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 June 18, 2014 the petitioner called the FS agency to report a power outage in her home on June 17, 2014 and the loss of food due to the outage. Petitioner was advised to come to the agency to file an application for the loss.
3. On June 17, 2014 the petitioner was at work from 6 a.m. to 3 p.m.

4. The fire department records from June 17, 2014 show that the call for assistance came in at about 5:59 AM and the incident was cleared at about 6:58 AM.
5. The WE Energy records show the petitioner's power was off from 6:20 AM to 8:23 AM on June 17, 2014.
6. On June 20, 2014 the petitioner came to the agency to apply for replacement FS.
7. On June 25, 2014 the agency issued a notice of decision to petitioner denying her request for replacement FS because there was no verification as to the actual time the power was off.

DISCUSSION

In Wisconsin, FoodShare (FS) helps individuals and families who have little money to buy the food they need for good health. The U.S. Department of Agriculture is responsible for setting program rules. The Wisconsin Department of Health Services (DHS) administers the state's FoodShare Program. County/tribal human or social service agencies (local agencies) determine eligibility for FoodShare benefits and are responsible for issuing benefits. See *FS Handbook* §1.1.1, available online at <http://www.emhandbooks.wi.gov/fsh/>; see also 7 CFR 273.1(a).

FS can be replaced in certain instances when a household misfortune causes destruction of a participant's food. The policy states:

Replace food purchased with FoodShare benefits and destroyed in a household misfortune up to the actual amount destroyed but not more than 1 month's allotment or the amount that was actually issued to the household, whichever is less. A replacement issuance shall be provided only if a household reports the loss orally or in writing to the agency within 10 days of the date the loss occurred.

A household may experience such a loss more than once. There is no limit to the number of replacement issuances.

A replacement issuance must be provided to the household within 10 days after report of the loss. Verify the household misfortune through the fire department, police department, a community organization such as the Red Cross, a collateral contact or home visit.

Deny or delay a replacement issuance if available documentation indicates that the household's request for replacement appears to be fraudulent.

Inform the household of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

FS Handbook, §7.1.1.5.

In this case, the agency explained at hearing that the reason for the denial of replacement FS was because the power outage was not verified to have last more than 4 hours. See *FS Handbook* §5.3.1.3 and Exhibit 2. The fire department records show that the call for assistance came in at about 5:59 AM and the incident was cleared at about 6:58 AM. The WE Energy records show the power was off from 6:20 AM to 8:23 AM. The petitioner testified that she was told at some point by the fire department to turn off the power (circuit breaker) in her home, which she did. She then testified that the fire department cleared the house at 6:34 AM, after which she had to go to work, and her kids had to go to daycare. Therefore, her testimony was that no one was in the home to turn the power back on. She then testified that her work schedule would show that she was working from 6 AM to 3 PM. See Exhibit 4. This timeline does not

make sense. She directly testified that the house was cleared at 6:34 AM, *and* that she was working at 6 AM. The testimony also contrasts with the application filed in which she reported that the power went out at 2:32 AM, and that approximately 6:45 AM *WE Energies* shut off the power and turned it back on at 4 PM. In all, I find the petitioner's testimony to be convenient, contradictory and not credible to rebut the agency's denial.

Based on the evidence before me, I agree that the agency was correct in not replacing the FS.

CONCLUSIONS OF LAW

The agency was correct in denying Replacement FS to petitioner.

THEREFORE, it is

ORDERED

That the petition for review herein 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, 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 31st day of July, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 31, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability