



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159046

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 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 August 06, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services correctly denied the petitioner's request for replacement FoodShare benefits in July, 2014, due to the loss of foods in her refrigerator after a storm-related power outage.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Belinda Bridges, HSPC senior
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County who was the casehead for a FS group of four (petitioner and her three children).
2. The petitioner received \$146 each month in FS benefits for June and July, 2014.

3. On or about July 1, 2014, a local storm caused a power outage at the petitioner's residence that caused all of the food in her refrigerator to spoil during the period of July 1 and July 2, 2014. All of the foods stored therein were destroyed by this event.
4. The director of customer care for Milwaukee We Energies, ██████████, sent a July 4, 2014 letter to the petitioner stating in pertinent part that: "Our records indicate that a power outage occurred in your neighborhood from 7/1/2014 to 7/2/2014 for approximately 36 hours due to recent storms and weather related equipment damage." See Exhibit 1.
5. On July 9, 2014, Milwaukee Enrollment Services received the petitioner's July 9, 2014 Request for Replacement of her FoodShare benefits. See Exhibit 1. On that request, petitioner estimated that her destroyed food value was about \$600 from that two day power outage of July 1-2, 2014.
6. The Department sent a July 14, 2014 Negative Notice to the petitioner stating that her request for replacement FS was denied because the "date of the outage verified through We Energies was 06/30/14 and your verification date was for outage dates 7/1/2014 and 07/02/2014."

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). There are no other stated limitations as to what constitutes a "household misfortune".

This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit.

7 C.F.R. § 274.6(f)(2).

Here, the petitioner timely reported that she had lost food on July 1-2, 2014, by replacement request made to the agency on July 9, 2014. Petitioner informed the agency that a storm had caused a power outage and all of the food in her refrigerator was spoiled. The Department sent a July 14, 2014 Negative Notice to the petitioner stating that her for replacement FS was denied because the "date of the outage verified through We Energies was 06/30/14 and your verification date was for outage dates 7/1/2014 and 07/02/2014. However, the Department was in error. As indicated in Finding of Fact #4 above, We Energies confirmed that petitioner's outage was during the period of July 1 and 2, 2014, not June 30, 2014 as incorrectly alleged by MES. The petitioner reported her loss within 10 days and met the above requirements for replacement of her FS allotment. However, the limitation on replacement is ". . . **not more than the monthly allotment issued for that month, whichever is less (\$146).**" In this case, the monthly FS allotment for July, 2014 was \$146. In other words, Food destroyed in a household misfortune justifies replacement FS up to the value of the amount lost, or the month's allotment, whichever is less. Accordingly, based upon the above, I conclude that Milwaukee Enrollment Services incorrectly denied the petitioner's request for replacement FoodShare benefits in July, 2014, due to the loss of foods in her refrigerator after a storm-related power outage.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services incorrectly denied the petitioner's request for replacement FoodShare benefits in July, 2014, due to the loss of foods in her refrigerator after a storm-related power outage.

THEREFORE, it is

ORDERED

That the matter is remanded to Milwaukee Enrollment Services with instructions to: issue July, 2014 replacement FS benefits of \$146 to the petitioner, within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of September, 2014

\sGary M. Wolkstein
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 September 5, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability