



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159083

PRELIMINARY RECITALS

Pursuant to a petition filed July 17, 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 September 10, 2014.

The issue for determination is whether the agency correctly denied Petitioner's application for replacement FS when Petitioner timely applied for replacement FS benefits and provided verification of the household misfortune with her application.

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: Pang Thao-Xiong
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. Petitioner suffered a power outage from June 30, 2014 through July 1, 2014.
3. On July 7, 2014 Petitioner submitted an application for replacement FS benefits. Petitioner submitted verification of the power outage with application. The verification letter was addressed to a [REDACTED], although WE energies spelled his name as [REDACTED]. Petitioner and [REDACTED] do not reside together, however Petitioner's WE energies account is in [REDACTED] name. The agency only filed the verification letter under [REDACTED] FS case, not Petitioner's.
4. On July 15, 2014 the agency denied Petitioner's application for replacement FS benefits stating that Petitioner did not meet the requirements for replacement FS benefits for June 2014, and because she had failed to provide verification of the power outage.
5. On July 17, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

DISCUSSION

Food purchased with FS 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(a)(2). The federal regulation directs the agency that:

Prior to replacing destroyed food that was purchased with Program benefits, the State agency shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. 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(a)(6)(ii). There is no time limit for providing verification. *Id.* In addition, the regulation places the burden on the agency to verify the household misfortune prior to issuing replacement FS benefits. *Id.* I further note that the state agency has 10 days to issue replacement FS benefits, except that the agency "shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent." 7 C.F.R. §274.6(a)(5)(ii).

In this case, the first issue is whether Petitioner meets the requirements for replacement FS benefits. Petitioner's power outage occurred from June 30, 2014 to July 1, 2014. Although the agency denied the request because it believed Petitioner reported a power outage only on July 1, 2014, Petitioner's application for replacement FS benefits also states that Petitioner's power went off at 6:30 p.m. on June 30, and did not come back on until 3:30 p.m. on July 1. Therefore, I find that Petitioner suffered a household misfortune in June and that she lost food from her June FS allotment during this household misfortune.

The agency further believed that Petitioner did not meet the FS replacement requirements because she failed to provide verification with her application. The statute places the burden on the agency to verify the household misfortune, not the Petitioner. However, in this case Petitioner provided verification with her application on July 7, but the agency only filed the verification with [REDACTED] case. The agency

further concedes that Petitioner's application is timely. Therefore, Petitioner has met all of the requirements for replacement FS benefits.

The last issue is the amount of food lost. Petitioner states that she lost \$400 worth of food during this two-day power outage. \$400 is less than Petitioner's monthly FS allotment in June 2014. Accordingly, based on the evidence before me, Petitioner's FS should be replaced in the amount of \$400 (the actual amount destroyed).

CONCLUSIONS OF LAW

1. The agency incorrectly denied Petitioner's application for replacement FS benefits.
2. Petitioner lost \$400 worth of food during a two-day power outage.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency to issue replacement FS benefits in the amount of \$400 to the petitioner. The agency has 10 days from the date of this decision to issue these replacement FS benefits.

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 15th day of September, 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 September 15, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability