



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159112

PRELIMINARY RECITALS

Pursuant to a petition filed July 18, 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 August 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner's replacement FS benefits when she lost power from June 26, 2014 to July 2, 2014 losing \$291.18 in food.

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: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. Petitioner's household size is 3. Petitioner's monthly FS allotment is \$497.00.
2. Petitioner lost power from June 26, 2014 through July 2, 2014. The agency has not established that Petitioner caused this power outage. Petitioner lost \$291.18 in food during her power outage.

3. Petitioner filed an application for FS replacement benefits for the food lost during the power outage. The agency denied Petitioner's application for FS replacement benefits on July 16, 2014.
4. On July 18, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

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, Petitioner timely reported that she lost food due to a power outage. She informed the agency that she did not have electrical service from June 26 through July 2. The agency denied Petitioner's replacement food share because "the disconnection was due to an unauthorized bypass of electrical services," and therefore this power outage was Petitioner's own fault.

Clearly Petitioner's electrical service was disconnected because of an unauthorized bypass of electrical services, however, it is impossible to determine from the evidence presented that Petitioner was responsible for the unauthorized bypass. Petitioner submitted documents showing that she was receiving bills from WE energies for electrical service between December 22, 2013 and June 24, 2014. Petitioner currently owes WE energies \$2,448.66. It has a section that states electrical service for 12/22/13 to 6/24/14. The total electricity charge is \$59.95. One of the 13 lines of small print lists electricity usage at 0 kWh, however, this is a small section of the bill that one would miss unless one were specifically looking for the electricity usage. There is a section for gas services listing the gas charges at \$22.55. The gas charges were less than the electricity charges even through Petitioner's actual electricity usage is listed at 0. Petitioner also presented a letter from WE energies showing she had service at her address from 10/31/2013. This evidence supports Petitioner's testimony that she did not know about the unauthorized bypass of electrical services. Although it is still possible that Petitioner caused the "unauthorized bypass," the agency has presented no evidence demonstrating this. There was no testimony from the landlord nor WE energies to explain what an unauthorized bypass of electrical services is and why Petitioner is at fault for it. Petitioner argues that the landlord is responsible, which is also possible.

Even if the unauthorized bypass was caused by Petitioner, it is still not a basis to deny Petitioner's request for replacement FS benefits. Replacement benefits are available anytime there is a household misfortune. There is no exception under the statute or policy that allows the agency to deny a person if the agency shows the household misfortune was caused by a person in the household.

The remaining issue is the amount of FS replacement benefits, if any. 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. See, *FoodShare Wisconsin Handbook* § 7.1.1.5; 7 C.F.R. § 274.6(a)(3). The food destroyed, does not per se have to have been purchased with the instant month's allotment. *Id.*

The agency submitted Petitioner's EBT usage to show that the last EBT purchase was June 15, 2014, which is 11 days before her power outage. The agency argued that Petitioner had already consumed her monthly FS allotment, and could not have lost the entire months food in a power outage that occurred near the end of the month. Petitioner's monthly FS allotment is \$497.00. On June 5, 2014 Petitioner made a \$225.34 purchase at Sam's Club. On June 6, 2014 Petitioner made a \$65.84 purchase at Walmart. On June 12, 2014 Petitioner made \$18.09 purchase at Pick N Save. On June 13, 2014 Petitioner made a \$22.30 purchase at Sam's club and \$10.33 at Pick N Save. On June 15, 2014 Petitioner made a \$13.71 purchase at Walmart, \$14.77 purchase at Pick N Save, and \$14.98 purchase at Piggly Wiggly. The remaining purchases were small dollar purchases, generally less than \$10 made at gas stations and liquor stores.

Petitioner argued that she went to Sam's Club early in June to buy "big old bags of chicken, hamburgers, corn, and ribs" to freeze and save for her Fourth of July Barbeque. She testified that her family ate hotdogs and other cheap food for the remaining part of the month to get by so that they could have a nice Fourth of July barbeque. I found it suspect that Petitioner would go to Sam's Club on the very first day her EBT card was reloaded to buy items for a Barbeque that was nearly a month away. However, no evidence in this record demonstrates that this did not happen. The agency did not make any verification effort or home visit to establish the amount of the actual loss.

I am convinced based on the record developed during this hearing that Petitioner had items in her freezer for a Fourth of July barbeque. I am also convinced that she purchased these items at Sam's Club and Walmart at the beginning of the month. The large food purchases at the beginning of the month were \$225.34 from Sam's Club and \$65.84 from Walmart for a total of \$291.18.

CONCLUSIONS OF LAW

That Petitioner incurred a household misfortune causing the loss of food; and the best evidence available is that he lost \$291.18 in food.

THEREFORE, it is

ORDERED

That the matter is remanded to the county agency with instructions to: issue June, 2014, replacement FS of \$291.18 to Petitioner. These actions shall be completed within 10 days of the date of this Decision.

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

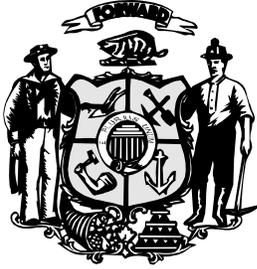
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 19th day of August, 2014

\sCorinne Balter
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 August 19, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability