



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

|

[REDACTED]
[REDACTED]

FOO/159137

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 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 11, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether evidence has been submitted that demonstrates that Petitioner meets the standards necessary for replacement of food purchased with FoodShare benefits due to the loss of food after roaches invaded her food supply after another unit in her building was fumigated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal seeking replacement of lost food purchased with FoodShare benefits. Petitioner indicates that the food was ruined when her landlord fumigated another unit in her building for roaches and the roaches then invaded her residence.

3. Petitioner filed an application for replacement of FoodShare on July 14, 2014. The amount of loss is noted on the application to be \$250.00 and is alleged to have occurred on July 10, 2014
4. Petitioner's FoodShare allotment for the month of July 2014 was \$528.00 per month.

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 (FSH)*, § 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 FoodShare with the Department's agent. *FSH*, § 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". Nonetheless:

...

(3) *Replacement restrictions.* (i) Replacement issuances shall be provided only if a household timely reports a loss orally or in writing. The report will be considered timely if it is made to the State agency within 10 days of the date food purchased with Program benefits is destroyed in a household misfortune.

...

7 CFR 274.6(a)(3).

State policy follows Federal law:

7.1.1.5 Replacement Issuance for Destroyed Food

Replace food purchased with FoodShare benefits and destroyed in a household misfortune up to the actual amount destroyed but not more than the monthly allotment actually issued to the household that month, whichever is less.

A replacement issuance shall be provided only if a household:

1. Reports the loss orally or in writing to the agency within 10 days of the date the loss occurred.
2. Completes a "Request for Replacement FoodShare Benefits" ([F-00330](#)). This can be completed and dropped off at the agency, mailed, or faxed to the agency, but must be received by the agency within 10 days of when the household reports the loss.

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, etc.

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.

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

FSH, §7.1.1.5.

The reason for the agency denial was that there was no letter from the landlord verifying the loss.

Here the request for replacement was filed within 10 days of the loss. Petitioner testified credibly that the landlord told her he would be fumigating, that she left her unit for a period of time because she has asthma and returned to find that roaches from the sprayed unit had invaded her food. Food in the refrigerator and cans were safe. Case notes indicate that Petitioner contacted the agency as to how to get FoodShare replaced and was told she needed proof from the landlord. She asked if a letter from neighbors would be sufficient as she is not on good terms with the landlord. She was told 'no' – verification had to come from the landlord.

I found Petitioner's testimony to be credible. That credibility was buttressed by general consistency with case notes and by the fact that she estimated her loss at less than the full FoodShare allotment and indicated that cans and refrigerated foods were fine. I also noted that if verification cannot be obtained, including because of a lack of cooperation by a source, then the best available evidence is to be used including the statement of the FoodShare recipient. *FSH*, §1.2.1.3. Finally, the FSH notes that a FoodShare replacement is to be denied if it appears to be fraudulent. The evidence does not suggest that this is a fraudulent claim.

Based on all of these circumstances, I am concluding that Petitioner has met the standards necessary for replacement of the July 10, 2014 food loss in the amount of \$250.00.

CONCLUSIONS OF LAW

That Petitioner has met the standards necessary for replacement of FoodShare benefits that were lost due to household misfortune, i.e., a roach infestation caused by fumigation of another dwelling unit and which occurred on July 10, 2014 in the amount of \$250.00.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to take the administrative steps necessary to issue a replacement for chair benefits to Petitioner and the amount of \$250.00 for the loss of food that occurred on July 10, 2014 in a household misfortune. These steps must be taken 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 5th day of September, 2014

\sDavid D. Fleming
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