



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159288

PRELIMINARY RECITALS

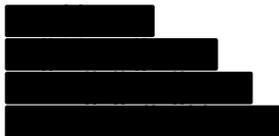
Pursuant to a petition filed July 25, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for replacement FS benefits.

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:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On July 21, 2014, the Petitioner submitted a request for replacement FS benefits, reporting a power outage and loss of food on July 1, 2014. The Petitioner also submitted a letter from WE

dated July 9, 2014 verifying a power outage at the Petitioner's home from June 30, 2014 – July 1, 2014.

3. On July 22, 2014, the agency issued a negative notice to the Petitioner informing her that the agency denied her application for replacement FS benefits due to not receiving the application and verification within 10 days of the date of the loss.
4. On July 25, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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. 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)(6)(ii). In addition, all losses of FS occasioned by agency error must be replaced. See, 7 C.F.R. § 273.17.

There is no dispute that a household misfortune occurred from June 30, 2014 - July 1, 2014. However, the petitioner's application and first report to the agency was July 21, 2014. The Petitioner submitted evidence that he was hospitalized from until July 2, 2014. His representative testified that he was too ill at that time to take care of this matter. The representative also testified that she called the agency and was told that as long as the letter from WE is dated within 10 days of the loss, it would be acceptable.

The regulations are clear that the report of loss and request for replacement benefits must be submitted within 10 days of the loss. There is no exception in the regulation. Therefore, I have no choice but to conclude that the agency properly denied the Petitioner's request because it was not received within 10 days of July 1, 2014.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request for replacement FS benefits.

THEREFORE, it is

ORDERED

That the Petitioner's appeal 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 11th day of September, 2014

\sDebra Bursinger
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 11, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability