



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159340

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 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 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly denied the Petitioner’s application for Replacement FoodShare 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: Jose Silvestre, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. The Petitioner completed a request for Replacement Foodshare benefits (form 00330) on July 14, 2014. (Exhibit 2, pg. 9)

3. On that same date, the Petitioner provided a letter from WE Energies, dated July 8, 2014 addressed to a PS, at Petitioner's same address, indicating that there was a power outage in their neighborhood from June 30, 2014 to July 1, 2014. (Exhibit 2, pg. 10)
4. On July 21, 2014, the agency sent Petitioner a Notice of Decision, indicating that his application for benefits was denied, because he did not timely report the loss of food. (Exhibit 2, pgs. 11 and 12)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 28, 2014. (Exhibit 1)

DISCUSSION

When a household experiences a misfortune that causes food to be destroyed, a state agency may issue Replacement FoodShare benefits. However, the food that was destroyed must have been purchased with FoodShare benefits. *FoodShare Wisconsin Handbook (FSH) §7.1.1.5*

Further, the amount of the Replacement Benefit is limited to the actual amount of food destroyed, but not more than the monthly allotment actually issued to the household, whichever is less. *FSH §7.1.1.5*

In order to receive replacement benefits a household must:

- 1) Report the loss orally or in writing to the agency within 10 days of the date the loss occurred.
- 2) Complete a "Request for Replacement FoodShare Benefits" (F-00330) within 10 days of the date the household reports the loss.

Id .

The agency is required to verify the loss through a government agency, collateral contact, home visit, etc. *FSH §7.1.1.5* The agency must then issue the replacement benefits within 10 days, unless the claim appears to be fraudulent. *FSH §7.1.1.5*

In the case at hand, the power outage that allegedly caused the Petitioner to lose food ended on July 1, 2014. Thus, the Petitioner had until July 11, 2014 to call the agency and report that he lost food due to a power outage.

The Petitioner asserts that he called the agency on July 1, 2014 to report the loss of his food and was told that he needed to come in with verification of the power outage. The Petitioner asserts that person he spoke at the agency on July 1, 2014, misinformed him and told him that he needed the letter from WE Energies when he came in to complete the form. Consequently, he waited until WE energies mailed PS a letter with the correct dates of the power outage, before completing the Request for Replacement FoodShare Benefits form.

There is no documentation in the record showing that the Petitioner contacted the agency about his loss of food on or before July 11, 2014. The first documentation showing that Petitioner reported his loss, is the July 14, 2014 application.

Even if it is accepted that the Petitioner timely reported the loss of food on July 1, 2014, the Petitioner did not timely complete the Request for Replacement FoodShare benefits. That needed to be completed within 10 days of the date Petitioner reported his loss, which put the deadline to complete the form on July 11, 2014. Consequently, it is found that the Petitioner's request for benefits was untimely.

The Petitioner made an equitable argument, stating that it is not fair to deny him benefits, when he acted on incorrect information provided by the agency. However, administrative law judges do not have equitable authority and are bound by the law as it is written.

CONCLUSIONS OF LAW

The agency correctly denied the Petitioner's application for Replacement FoodShare benefits.

THEREFORE, it is ORDERED

That the petition 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 16th day of September, 2014

\sMayumi M. Ishii
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 16, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability