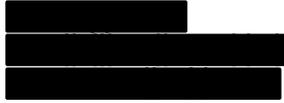




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159352

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 request 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 # [redacted]) is a resident of Milwaukee County.
2. Petitioner experienced a power outage at his home between June 30, 2014 and July 1, 2014. (Exhibit 2, pg. 9)

3. Petitioner received his usual FoodShare disbursement on July 2, 2014 for \$181.00. (Exhibit 2, pg. 7)
4. On July 14, 2014, the Petitioner completed a Request for Replacement Foodshare benefits indicating that his food was destroyed/spoiled on July 5, 2014. (Exhibit 2, pg. 8)
5. On that same date, the Petitioner submitted a letter from WE Energies indicating that a power outage occurred in his neighborhood between June 30, 2014 and July 1, 2014. (Exhibit 2, pg. 9)
6. On July 22, 2014, the agency sent the Petitioner a Negative Notice, advising him that his request for replacement benefits was denied because he did not report the loss of his food within ten days. (Exhibit 2, pgs. 10 and 11)
7. 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 report 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 caused Petitioner's food to spoil occurred between June 30, 2014 and July 1, 2014. Petitioner received his regular FoodShare allotment on July 2, 2014. In the absence of evidence to the contrary, it is reasonable to presume that much of the food that Petitioner purchased with his June allotment should have been consumed by then. As such, it is not clear from the record whether any of the food that Petitioner bought with his FoodShare benefits was actually lost in the power outage.

In addition, the Petitioner had until July 11, 2014 to report the spoilage. The Petitioner did not report the loss of his food until July 14, 2014, when he completed the Request for Replacement Foodshare Benefits form. As such, his request for benefits was untimely.

The Petitioner makes the equitable argument that it is not fair to hold him to the usual filing deadlines, because he was injured during the power outage and unable to go to the agency to request replacement benefits. However, the Petitioner could have phoned the agency to report the loss of his food. Further, administrative law judges do not have equitable authority and must apply 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 denied.

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

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 September 16, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability