



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/159533

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 04, 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 29, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner’s application for replacement FS benefits for failing to provide verification when she provided verification, but the agency filed the verification under the incorrect FS case.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jose Silvestre  
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.
2. Petitioner lost power from June 30, 2014 to July 2, 2014 due to storms in her area.
3. Petitioner lost food valued at \$250 during this power outage.

4. Petitioner applied for replacement FS on July 8, 2014. Petitioner provided verification that she was without power on July 2, 2014. The verification Petitioner provided was a letter from WE energies addressed to [REDACTED]. [REDACTED] is Petitioner's husband, but they are separated. The utilities were still in his name. [REDACTED] had a FS case that closed in 2010. The agency filed this verification under [REDACTED]'s close FS case, and later denied Petitioner's application for replacement FS for failing to provide verification.
5. Following the hearing Petitioner provided additional verification that her power was out from June 30, 2014 to July 2, 2014.

### 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 on July 8, 2014 that she did not have power for from June 30, 2014 to July 2, 2014. She specified this time period on her application for replacement FS, but she provided a letter from WE energies stating that she lost power on July 2, 2014 from 1:01 p.m. to 5:40 p.m. Although Petitioner provided proof to the agency that she lost power, the letter from WE energies was addressed to [REDACTED]. Mr. [REDACTED] is Petitioner's husband, they are separated, but the WE energies bill is still in his name. When the agency received that verification with Petitioner's application for replacement FS benefits, the agency filed the verification under [REDACTED]'s FS case. [REDACTED]'s FS case had closed in 2010, almost four years before Petitioner's application for replacement FS benefits. The agency then denied Petitioner's replacement FS application failing to provide verification of the power outage.

During the hearing the agency located the letter from WE energies and agreed to issue Petitioner \$250 in replacement FS benefits. Petitioner agreed that \$250 would be a fair estimate of the amount of food lost during the power outage. The agency e-mailed me following the hearing. The agency explained that they were unable issue the replacement FS benefits because Petitioner's verification only showed a power outage for four hours instead of two plus days Petitioner stated her power was out. The record was held open, and Petitioner later provided proof that her power was actually out from June 30, 2014 to July 2, 2014.

Petitioner has met all of the requirements for replacement FS benefits. Petitioner applied within the 10 days and provided verification of her household misfortune. Both WE energy letters verify that Petitioner suffered a household misfortune.

The issue then becomes what amount of food Petitioner lost. If Petitioner's power was out for only four hours, then it would have been very unlikely that she in fact lost \$250 worth of food. However, Petitioner has shown that she suffered from a two plus day power outage, and I am satisfied that she is credible when she testified that she lost \$250 worth of food.

### CONCLUSIONS OF LAW

That Petitioner incurred a household misfortune causing the loss of \$250 food.

**THEREFORE, it is**

**ORDERED**

That this case is remanded back to the agency for the agency to issue Petitioner replacement FS benefits in the amount of \$250. The agency has 10 days from the date of this decision to issue Petitioner these replacement FS benefits.

**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).

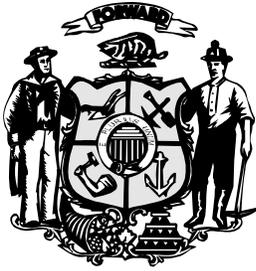
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 9th day of September, 2014

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\sCorinne Balter  
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 9, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability