



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159534

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 offered Petitioner \$47 in replacement FS benefits when Petitioner stated that she lost greater than that amount.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

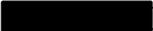
Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre
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 # ) is a resident of Milwaukee County. Petitioner receives \$134 in monthly FS benefits.
2. On July 11, 2014 Petitioner filed an application for replacement FS benefits due to a power outage that occurred from June 30, 2014 to July 1, 2014. Petitioner provided verification of the

- power outage with her application. Petitioner stated that she lost \$300 in food during the power outage.
3. On July 21, 2014 the agency denied Petitioner's application for replacement FS benefits as untimely.
 4. On August 4, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.
 5. When preparing the case for fair hearing, the agency discovered that Petitioner's application was timely, and offered her \$47 in replacement FS benefits. Petitioner rejected the agency's offer and a fair hearing was held.
 6. Petitioner lost \$80 worth of food during this multi-day power outage.

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).

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).

In this case the agency initially denied Petitioner's application for replacement FS benefits because the agency believed that it was outside the 10 day statutory time limit. At the hearing the agency conceded that they had erred in denying Petitioner's application for FS benefits as untimely.

The only issue left in dispute was the amount of food Petitioner lost during this multi day power outage. The agency believed that \$47 of Petitioner's food was destroyed. However, the agency was unable to explain how they calculated this \$47 amount.

Petitioner on the other hand said that she lost \$300 worth of food in her application for replacement FS benefits. At the beginning of the hearing she believed that she lost \$100 worth of food. The agency then went through Petitioner's FS benefit usage with Petitioner to determine the amount of food Petitioner lost. When questioned about specific dollar amounts of lost food, Petitioner admitted that her daughter does the shopping, and that she is not sure how much grocery items cost. Petitioner agreed that she lost the entire amount of food purchased on June 5, June 11, June 12, and June 13. Petitioner stated that she lost milk and eggs in addition to that amount of food that she purchased. The total of those purchases plus an additional \$6 for milk and eggs is approximately \$80 in food lost.

I note that I had some questions regarding Petitioner's credibility. Petitioner first stated that she lost \$300 worth of food, then \$100, and in the end \$80. She further stated that her daughter does her grocery shopping and that she does not know how much items cost at the grocery store. However, she later went through each day of her FS usage picking the dates with her biggest purchases as the food that she lost. I

do not know how she would know the items purchased on each date or the cost of those items if her daughter does her grocery shopping.

Although I question Petitioner's credibility, I do not have any other evidence or testimony to refute that testimony. The agency was unable to explain how they came up with \$47 as the amount of food lost. The FS usage does not list the items purchased on each date just the store and the total purchase amount. Further it is reasonable for a person to lose \$80 worth of food during a multi-day power outage.

CONCLUSIONS OF LAW

Petitioner lost \$80 worth of food during a multi-day power outage and she timely applied for replacement FS benefits.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency for the agency to issue Petitioner \$80 worth of replacement FS benefits after offset for any replacement FS benefits already issued by the agency if any. The agency must comply with this order 10 days from 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.

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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 4th day of September, 2014

\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 4, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability