



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159582

PRELIMINARY RECITALS

Pursuant to a petition filed August 05, 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 September 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied Petitioner's application for replacement FS benefits when Petitioner applied fifteen days after her misfortune and there is a 10 day statutory time limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Pang Thao-Xiong
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 suffered a power outage from June 30, 2014 through July 1, 2014.

3. On July 17, 2014 Petitioner submitted her application for replacement FS benefits due to the power outage. Petitioner submitted verification of the power outage with her application.
4. On July 22, 2014 the agency denied Petitioner's application for replacement FS benefits because the application was not made within 10 days of the power outage.
5. On August 5, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

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). If a person reports a household misfortune to the agency within the 10 day timeframe, the person has an additional 10 days from the date of that report to provide a signed statement attesting to the household's loss. 7 C.F.R. § 274.6(a)(4)(ii).

The issue is whether Petitioner's application for replacement FS benefits was timely. Petitioner's household misfortune was a power outage that occurred June 30, 2014 to July 1, 2014. Petitioner did not report this household misfortune until July 17, 2014. This is beyond the 10 day statutory time limit. Petitioner argued that she orally reported the power outage to the agency on July 1, 2014. The agency never told her that she had 10 days to complete her application. Rather the agency told her that she needed submit verification with her application. She then waited on the verification and submitted it with her application on July 17, 2014. The agency pointed out that the letter from WE energies is dated July 4, 2014.

The Division of Hearings and Appeals has no equitable powers. Rather, like any administrative agency, it "has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates." *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). This finding is consistent with the state supreme court's earlier statement that "[n]o proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944). Because the statute explicitly states that the application for replacement FS benefits must be made within 10 days of the household misfortune, I must deny the petitioner's request.

I note that even if I had equitable powers I would deny Petitioner's request. Although the agency admittedly did not inform Petitioner of the 10 day time limit, the WE energies letter is dated July 4, 2014. This letter was not submitted until July 17, 2014. Petitioner could have easily submitted the letter by July 11, 2014, which was the statutory due date.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's application for replacement FS benefits when Petitioner applied fifteen days after her misfortune and there is a 10 day statutory time limit.

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 10th 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 10, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability