



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/159648

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 07, 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 telephonic hearing was held on August 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services correctly denied the petitioner's July 30, 2014 request for replacement FoodShare benefits, due to the loss of foods in his refrigerator after a June 30, 2014 fire in his apartment.

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: Jose Silvestre, Jr., IM advanced  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received FS benefits for a household of one.
2. The petitioner receives \$189 each month in FS benefits.

3. On June 30, 2014, the petitioner had a fire in his apartment that caused all of the food in his refrigerator to spoil on or about July 1 2014. All of the foods stored therein were destroyed by this event.
4. A case worker at the American Red Cross in his July 30, 2014 letter confirmed that petitioner was displaced by a fire at his home on July 1, 2014.
5. On July 30, 2014, Milwaukee Enrollment Services received the petitioner's Request for Replacement of his FoodShare benefits. On that request, petitioner requested that his destroyed food be replaced due to the June 30, 2014 fire in his apartment.
6. The Department sent an August 4, 2014 Negative Notice to the petitioner stating that his July 30, 2014 request for replacement FS was denied because the petitioner failed to report the loss to the agency within 10 days of the June 30, 2014 date of fire loss, as required for FS replacement in FoodShare Wisconsin Handbook, 7.1.1.5, "Replacement Issuance for Destroyed Food."

### 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, the petitioner did not timely report that he had lost food after his June 30, 2014 apartment fire, by his replacement request made to the agency on July 30, 2014. See Finding of Fact # 2 - #4 above. The Department sent an August 4, 2014 Negative Notice to the petitioner stating that his July 30, 2014 request for replacement FS was denied because the petitioner failed to report the loss to the agency within 10 days of the June 30, 2014 date of fire loss, as required for FS replacement in FoodShare Wisconsin Handbook, 7.1.1.5, "Replacement Issuance for Destroyed Food."

During the August 27, 2014 hearing, petitioner did not contest the date of loss or the date that he reported the loss to the agency. The petitioner explained that he was not aware of the 10 day time limit by which he needed to report the loss to the agency. However, there is no exception to the 10 day policy. The policy clearly states that a replacement issuance shall be provided **only** if a household: "1. Reports the loss orally or in writing to the agency within 10 days of the date the loss occurred." The petitioner failed to report his loss within 10 days, and thus did not meet the above requirements for replacement of his FS allotment. Accordingly, based upon the above, I must conclude that Milwaukee Enrollment Services correctly denied the petitioner's July 30, 2014 request for replacement FoodShare benefits, due to the loss of foods in his refrigerator after a June 30, 2014 fire in his apartment because petitioner failed to report to the agency within 10 days of the date of loss pursuant to the FoodShare Wisconsin Handbook, 7.1.1.5.

**CONCLUSIONS OF LAW**

Milwaukee Enrollment Services correctly denied the petitioner's July 30, 2014 request for replacement FoodShare benefits, due to the loss of foods in his refrigerator after a June 30, 2014 fire in his apartment because petitioner failed to report to the agency within 10 days of the date of loss pursuant to the FoodShare Wisconsin Handbook, 7.1.1.5.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 29th day of September, 2014

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\sGary M. Wolkstein  
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 29, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability