



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159650

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 September 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner's request for replacement FS benefits for providing verification of her power outage more than 10 days after her application when the agency, not the Petitioner, is required to verify the household misfortune and there is no statutory time limit for verification.

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: 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 1, 2014 Petitioner submitted her application for replacement FS benefits. Petitioner did not submit verification of the power outage. On July 15, 2014 the agency denied Petitioner's application for replacement FS benefits because she failed to provide verification of her power outage.
4. On July 24, 2014 Petitioner provided verification from WE energies that her power was out from June 30, 2014 to July 1, 2014. On this same date Petitioner filed a new application for replacement FS benefits with verification. The agency later denied this application because it was more than 10 days after Petitioner's power outage.
5. On August 4, 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(a)(2). The statute directs the agency that:

Prior to replacing destroyed food that was purchased with Program benefits, the State agency shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. 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(a)(6)(ii). There is no time limit for providing verification. *Id.* In addition, the statute places the burden on the agency to verify the household misfortune prior to issuing replacement FS benefits. *Id.* I further note that the state agency has 10 days to issue replacement FS benefits, except that the agency "shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent." 7 C.F.R. § 274.6(a)(5)(ii).

The issue in this case is whether Petitioner failed to meet the statutory requirements for replacement FS benefits by providing verification of her household misfortune more than 10 days after her application date. The household misfortune was a widespread power outage. This power outage occurred from June 30, 2014 to July 1, 2014. Petitioner reported the power outage in writing on July 1, 2014. This is well within the 10 day statutory time limit. Petitioner also completed a Request for Replacement FS Benefits, Form F-00330 on that same day. Form F-00330 does not state that Petitioner must provide verification within 10 days of her application for replacement FS benefits in order to receive those benefits. However, nonetheless Petitioner provided verification of her power outage on July 24, 2014. Petitioner testified that she would have provided verification earlier, but WE energies was running behind because they had so many requests for verification.

I further note that there is no statutory requirement for Petitioner to provide verification, and no statutory requirement that either the agency or Petitioner complete the verification within 10 days of Petitioner's application. Statutorily the burden is on the agency to verify the household misfortune. The agency may delay or deny the issuance of replacement FS benefits if they believe that a request for replacement FS benefits is fraudulent. Here even without third party verification it is unlikely that Petitioner's request is

fraudulent. This was a widespread power outage in the area where Petitioner lives. In addition Petitioner provided a letter from WE energies on July 24, 2014 that shows her request was not fraudulent. Therefore, I can only conclude that Petitioner suffered a household misfortune and that she met all of the statutory requirements to receive replacement FS benefits.

The last issue is the amount of replacement FS benefits. Petitioner requested \$312.00 in replacement FS benefits. It is very likely that Petitioner lost \$312 worth of food during a multi day power outage. The agency has shown Petitioner's usage of her FS benefits. Petitioner had two large food purchases on June 12, 2014 and June 26, 2014. The June 12, 2014 purchase was for \$151.03. The June 26, 2014 purchase was for \$74.66. Petitioner also had a \$40 food purchase on June 17. This usage detail does not show Petitioner had food in her freezer or refrigerator what was in Petitioner's freezer or refrigerator when she lost power. The usage detail does not even show the specific items purchased. purchased with her FS benefits from other months. Petitioner's statement of the amount of food lost is the best evidence for what she lost during this power outage. There is not contrary evidence to either show Petitioner is not credible or that she in fact loss less food than what she reported.

### **CONCLUSIONS OF LAW**

The agency incorrectly denied Petitioner's application for replacement FS benefits.

**THEREFORE, it is**

**ORDERED**

This case is remanded back to the agency to issue Petitioner \$312 in replacement FS benefits. The agency has 10 days from this decision to issue 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