



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/159687

PRELIMINARY RECITALS

Pursuant to a petition filed August 08, 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.

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 has been living at [redacted] since March 1, 2014.
3. Petitioner suffered a power outage at [redacted] from June 30, 2014 – July 1, 2014.

4. Petitioner lost \$145 worth of food during the power outage. This is less than Petitioner's monthly FS allotment of \$189.
5. On July 11, 2014 Petitioner filed an application for replacement FS benefits. Petitioner included verification of a power outage at [REDACTED] [REDACTED] in Milwaukee with his application for replacement FS benefits.
6. On July 21, 2014 the agency denied Petitioner's application for replacement FS benefits. Although Petitioner had been living at [REDACTED] since March 2014, Petitioner first reported this address as a change in his mailing address in April 2014. He did not report that he was living at that address until after the agency's denial. The agency believed Petitioner was living at [REDACTED] [REDACTED].
7. On August 8, 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). 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).

In this case Petitioner applied for replacement FS benefits within the 10 day statutory time limit. Petitioner provided verification of a power outage at [REDACTED] [REDACTED]. Petitioner also included a statement attesting to the amount of the household loss with his application. Thus, it appears that Petitioner has met all of the requirements for replacement FS benefits.

The agency denied Petitioner's request because the request appeared fraudulent. The address on Petitioner's file did not match the address where the power outage occurred. Petitioner reported the address where the power outage occurred as his mailing address. He reported a different address as his residence. Although the statute allows the agency to deny or delay the issuance of replacement FS benefits when the available documentation indicates that the request appears to be fraudulent, in this case the agency never examined the available documentation. The lease was available documentation that showed Petitioner's request was not fraudulent, but the agency never examined the lease. Had the agency examined the lease, the agency would have learned that Petitioner lived at the address where the power outage occurred. Petitioner's request was not fraudulent, Petitioner met all of the statutory requirements, and the agency incorrectly denied Petitioner's application for replacement FS benefits.

The only issue left in dispute is the amount of food lost during this multi day power outage. Petitioner states that \$145 worth of food was lost. This is less than Petitioner's monthly FS allotment of \$189. The agency did not present evidence to show otherwise. I further find Petitioner to be a credible witness. Petitioner presented a copy of his lease from [REDACTED]. This lease corroborated his testimony about where he lived when the power outage occurred. It is very conceivable for a person to lose \$145 worth of food during a multi-day power outage.

**CONCLUSIONS OF LAW**

Petitioner lost \$145 worth of food during a multi-day power outage and he timely applied for replacement FS benefits.

**THEREFORE, it is ORDERED**

That this case is remanded back to the agency to issue \$145 in replacement FS benefits. The agency has 10 days from the date of this decision to issue the 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.

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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 11th 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 11, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability