



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOO/160007

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by Milwaukee Enrollment Services to deny replacement FoodShare benefits (FS), a hearing was held on September 16, 2014, by telephone.

The issue for determination is entitled to apply for replacement FS.

PARTIES IN INTEREST:

Petitioner:



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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On July 10, 2014, petitioner and her daughter went to the agency to report food destroyed by a power outage and to request replacement FS. Both filled out the paperwork for the replacement FS and provided verification of the power outage.
3. Petitioner's daughter received the replacement FS in late July. Petitioner inquired about her request on July 30, but the agency representative told her that there was no record of a request for replacement by her, and it was then too late to request replacement. She then filed this appeal.

DISCUSSION

The FS Handbook, Appendix 7.1.1.5 establishes the procedure for replacing food lost due to a household misfortune:

Replace food purchased with FoodShare benefits and destroyed in a household misfortune up to the actual amount destroyed but not more than the monthly allotment actually issued to the household that month, whichever is less.

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.
2. Completes a "Request for Replacement FoodShare Benefits" (F-00330). This can be completed and dropped off at the agency, mailed, or faxed to the agency, but must be received by the agency within 10 days of when the household reports the loss.

The Handbook provision is based upon the federal mandate in 7 C.F.R. §274.6. The federal regulation directly addresses the issue in this case at §274.6(a)(4):

(4) *Household statement of loss.* (i) Prior to issuing a replacement, the State agency shall obtain from a member of the household a signed statement attesting to the household's loss. The required statement may be mailed to the State agency if the household member is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative.

(ii) If the signed statement or affidavit is not received by the State agency within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the State agency shall consider the statement timely received.

Petitioner testified credibly about her attempt to request the replacement FS. She described the form accurately. She testified that the agency representative on July 10 did not offer to make her a copy of the form, and thus she did not have one for the hearing. I checked petitioner's electronic case file and found no record of the form, but then I checked her daughter's electronic case file and found no replacement request there either. Nevertheless her daughter received \$250 replacement FS, which I verified by checking her daughter's FS benefit history.

I conclude that under these circumstances petitioner should be allowed to apply for the replacement of the food destroyed in late June/early July because it is likely that the agency lost her request for replacement FS filed on July 10.

CONCLUSIONS OF LAW

Petitioner applied for replacement FS on July 10, 2014, but the agency lost the request.

THEREFORE, it is

ORDERED

That the matter be remanded to Milwaukee Enrollment Services with instructions to allow petitioner to file a new request for replacement of lost FS retroactive to July 10, 2014, and to act on the new request as if it were filed on July 10, 2014. If the agency denied the new request petitioner can file a new appeal of

that denial. The agency shall take action to allow petitioner to file the request within 10 days of this decision.

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 17th day of September, 2014

\sBrian C. Schneider
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 17, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability