



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160082

PRELIMINARY RECITALS

Pursuant to a petition filed August 25, 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 15, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied Petitioner's application for replacement FS benefits when the application was made more than 10 days after Petitioner's power outage.

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: Katherine May

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. Petitioner receives FS benefits.
2. Petitioner suffered a power outage from June 30, 2014 through July 1, 2014.

3. On July 18, 2014 Petitioner provided a letter from WE energies as verification of her power outage.
4. On August 19, 2014 Petitioner submitted an application for replacement FS benefits. The agency denied Petitioner's application because it was untimely.
5. On August 25, 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).

The issue is whether Petitioner's application for replacement FS benefits was timely. By statute Petitioner has 10 days from the date of the household misfortune to apply for replacement FS benefits. In this case the household misfortune was a power outage that occurred from June 30, 2014 through July 1, 2014. Petitioner did not apply for replacement FS benefits until August 19, 2014. This is well beyond the 10 day statutory time limit. I further note that Petitioner submitted verification of the power outage on July 18, 2014. This is before her application date, but still well beyond the 10 day statutory time limit.

Petitioner argued that it was the agency's fault that her application was late. She stated that she kept calling the agency and asking the agency to send her an application, but the agency did not send it until it was too late. I pointed out that there were many people who were able to apply on time. Petitioner stated that she is not someone who collects benefits as a means to support herself. She stated that she works full time and only has a limited amount of time to contact the agency. She contacted the agency daily. Nobody told her of the deadline, and she was not sent the application until later. The agency reviewed the case notes and testified that Petitioner first contacted them on July 18, 2014, which was beyond the 10 day statutory time limit.

I do not have equitable authority to grant Petitioner's request. However, even if I had that authority, I would not grant Petitioner's request as I do not believe Petitioner is credible. Petitioner testified that she works full time, and is very busy. If that's the case, it would follow that submitting the application within the 10 day time limit could be difficult for her. I note that I have heard many replacement FS cases, and can list many Petitioners who timely made their requests for replacement FS. This Petitioner did not timely apply. That is not the agency's fault as Petitioner argues.

CONCLUSIONS OF LAW

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

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 18th 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 18, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability