



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/168397

PRELIMINARY RECITALS

Pursuant to a petition filed September 02, 2015, 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 September 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied petitioner's request for replacement FS.

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, HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 5, 2015 petitioner reported her loss of FS to the agency.

3. On August 12, 2015 the petitioner submitted a Request for Replacement FS Benefits and a We Energies letter to the agency. See Exhibits 3 and 4. The We Energies letter confirms petitioner had no electrical service between August 1, 2015-August 7, 2015.
4. On August 14, 2015 the agency issued negative notice to petitioner advising her that her request for Replacement FS was denied because "FoodShare for 08-15 was not issued until after the household misfortune". See Exhibit 5.

DISCUSSION

In Wisconsin, FoodShare (FS) helps individuals and families who have little money to buy the food they need for good health. The U.S. Department of Agriculture is responsible for setting program rules. The Wisconsin Department of Health Services (DHS) administers the state's FS Program. County/tribal human or social service agencies (local agencies) determine eligibility for FS benefits and are responsible for issuing benefits. See *FS Handbook* §1.1.1, available online at <http://www.emhandbooks.wi.gov/fsh/>; see also 7 CFR 273.1(a).

FS can be replaced in certain instances when a household misfortune causes destruction of a participant's food. The entire policy states:

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.

Note: The agency must include the 10 day due date, and consequences for failure to return this form timely. A manual verification request form should be issued to meet this requirement. (See [1.2.1.2 Request for Verification](#))

A replacement issuance must be provided to the household within 10 days after report of the loss. Verify the household misfortune through the fire department, police department, a community organization such as the Red Cross, a collateral contact or home visit, etc.

Deny or delay a replacement issuance if available documentation indicates that the household's request for replacement appears to be fraudulent.

Inform the household of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

A household may experience such a loss more than once. There is no limit to the number of replacement issuances.

Note: Ensure you use the "905" replacement auxiliary code when issuing replacement benefits for destroyed food. This is essential for tracking purposes.

Example 7: Joyce received the maximum allotment for July, the month of the disaster. The food that Joyce stored in her basement freezer that was purchased with June benefits was also destroyed. Joyce is requesting a replacement for the food purchased in June and July. Joyce is eligible for replacement benefits up to the max allotment for July, but not for the food purchased with the June benefit.

Example 8: Kevin is a single individual receiving FoodShare monthly in the amount of \$200. Kevin completes the Affidavit of destroyed food stating his food spoiled due to a power outage on July 16, and he lost \$100 worth of food purchased with his July FS benefits. The worker would verify the power outage with the Power Company and his replacement benefit amount would be \$100. The worker would look at the CWW EBT Transaction Detail screen to ensure he has spent \$100 prior to the power outage date in July.

Example 9: Mary and her daughter receive the maximum FS benefit for a family of 2 of \$367. They have a fire on July 17th and she states all her food was destroyed. She had just gone to the grocery store the day before and used all her benefits. They complete the affidavit and are eligible to have their July allotment replaced for the amount of \$367.

Example 10: Steve and his [child](#)  receive \$367 a month in FS. There is a power outage on the 10th of the month and the food in his refrigerator that he purchased with current months FS has spoiled and he requests full replacement. However, the worker checks the "EBT Transaction Detail Screen" in the CWW and sees he only spent \$200 worth of his current month's benefits on food. His replacement will be for \$200. He still has a monthly benefit of \$167 in his account that he could still use after the power outage was fixed.

For policy related to replacing an issuance as the result of a disaster see [5.3.1](#).

FS Handbook, §7.1.1.5.

The agency's position at hearing was that because petitioner's August benefits had not been issued when she applied in August, that the request should be denied. I see nothing in this policy that states that such a situation requires a denial. Petitioner is not requesting August benefits, she was requesting a portion of her July's benefits. There was no dispute that she met the requirements for reporting the loss, applying or verifying the loss. There was no evidence to suggest that the agency found her request for replacement FS to be fraudulent. Accordingly, I find no basis for the denial.

CONCLUSIONS OF LAW

The agency did not meet its burden to show that it correctly denied petitioner's request for replacement FS.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to process petitioner's Request for Replacement FS and issue the replacement accordingly. The agency shall do so within 10 days of this decision and issue a notice of decision to petitioner regarding same.

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 Milwaukee,
Wisconsin, this 13th day of October, 2015

\sKelly Cochrane
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 October 13, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability