



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/168835

PRELIMINARY RECITALS

Pursuant to a petition filed September 21, 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 hearing was held on October 08, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner replacement FoodShare (FS) benefits.

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: Jose Silvestre

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. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 14, 2015 the petitioner suffered a power outage.
3. On September 4, 2015 the petitioner contacted the agency and informed them that he suffered a power outage and lost food. He requested replacement FoodShare (FS) benefits.

4. On September 10, 2015 the petitioner provided a letter from WE energies verifying a power outage on August 14, 2015 from 5:06 p.m. to 11:22 p.m.
5. On September 18, 2015 the agency sent the petitioner notice stating that they denied his Request for replacement FS benefits.

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 the petitioner's application for replacement FS benefits was timely. By statute the 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 August 14, 2015. The petitioner did not apply for replacement FS benefits until September 4, 2015. This is well beyond the 10 day statutory time limit.

The petitioner argued that he applied late because he did not know that the agency issued replacement FS benefits. The petitioner learned from a neighbor that the agency issued replacement FS benefits. 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 believe it is Petitioner's responsibility to contact the agency to inquire about replacement FS benefits within the 10 day time limit. If a person had lost a large amount of food during a power outage, then it follows that the person would contact the agency to see what if anything could be done.

CONCLUSIONS OF LAW

The agency correctly denied the petitioner replacement FoodShare (FS) benefits.

THEREFORE, it is

ORDERED

That the petition is dismissed.

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 9th day of October, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 9, 2015.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability