

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT**

In the Matter of:

Master Case No. M2017-966

Appellants.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND INITIAL ORDER

APPEARANCES:

, the Appellant, Self-represented

Department of Health WIC Program (Program), by
Office of the Attorney General, per
John G. Macejunas, Assistant Attorney General

PRESIDING OFFICER: Jerry A. Villarreal, Health Law Judge

On September 21, 2017, the Appellant filed her request for a WIC Program¹ Fair Hearing to contest the Program's Notice of Violation and Claim (Notice), dated August 30, 2017. On October 6-23, 2017, the Presiding Officer (on authority delegated by the Secretary of Health) conducted a bifurcated hearing. Appellant's hearing was bifurcated in order to provide the Appellant with an additional opportunity to file documentary evidence she previously failed to file during the schedule leading up to the hearing date.

VIOLATION, IN PART, and CLAIM AFFIRMED.

ISSUES

- A. Did the Appellant commit a WIC participant violation as defined in 7 C.F.R. § 246.2 and WAC 246-790-530?
- B. If Appellant committed a WIC participant violation, is a one-year disqualification warranted under 7 C.F.R. 246.12(u)(2)?

¹ Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

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- C. Did the Program properly pursue a claim in the amount of \$2,545.28 against the Appellant pursuant to 7 C.F.R. § 246.23(c)(1)(i) and WAC 246-790-550?

SUMMARY OF PROCEEDINGS

At the hearing, the WIC Program presented the testimony of _____, Joint Base Lewis-McChord (JBLM) WIC Certifier, _____, JBLM WIC Certifier, _____, WIC Investigator, and _____, the Appellant. Appellant and Appellant's husband, _____, testified on behalf of the Appellant.

The Presiding Officer admitted the following Program exhibits:

- Exhibit P-1: WIC 2015-2016 Income Eligibility Standards, effective April 6, 2015;
- Exhibit P-2: WIC Rights and Responsibilities WIC0403-0405;
- Exhibit P-3: WIC Client Locator and Client Information-Detail Report for H.J.H. WIC0069-0082;
- Exhibit P-4: WIC Client Locator and Client Information-Detail Report for _____, WIC0065-0086;
- Exhibit P-5: Print Screen for WIC Client Services for _____ at MultiCare-Joint Base Lewis-McChord, dated July 24, 2017, WIC0083-0086;
- Exhibit P-6: Print Screen for WIC Client Services for H.J.H. at MultiCare-Joint Base Lewis-McChord, dated August 24, 2017, WIC0089-0109;
- Exhibit P-7: Office of Nutrition Services Compliance Team Compliance Intake Form, dated March 23, 2017, WIC0045-0059;
- Exhibit P-8: WIC Compliance Team Investigation Summary, dated September 14, 2017, WIC0001-0029;
- Exhibit P-9: Rights and Responsibilities signed by _____, dated July 21, 2015, September 28, 2015, October 21, 2015, and September 20, 2016;

- Exhibit P-10: Compliance Team Investigation Statement Form by _____, dated April 12, 2014, April 13, 2014, and May 1, 2017, WIC0237-0242;
- Exhibit P-11: DOH letters to _____ Requesting Information, dated April 21, 2017, May 12, 2017, and June 15, 2017, WIC0266-00272 and WIC0276-0279;
- Exhibit P-12: Compliance Team-Investigation Statement Form by _____, dated June 7, 2017, WIC0246;
- Exhibit P-13: Washington Employment Security History for _____ dated April 14, 2017, May _____, 2017, and July 20, 2017; WIC0119-0120, WIC0132, WIC0134, WIC0140, WIC0142; and DOH Requests of Information to WA Employment Security, dated April 13, 2017, May 3, 2017, and July 19, 2017; WIC0142, WIC0153, WIC0157, and WIC0160;
- Exhibit P-14: Emails Between Massage Envy and DOH RE: _____ Pay Stubs, dated September 8, 2017, WIC0416-0466;
- Exhibit P-15: Certificate of Release or Discharge from Active Duty for _____, dated April 18, 2017, WIC0137;
- Exhibit P-16: USDA Memorandum RR: WIC Policy Memorandum #2013-3 Income Eligibility Guidance, dated April 26, 2013, WIC0292-0305;
- Exhibit P-17: WIC Checks Number and Dollar Value Spreadsheet for _____ and H.J.H., dated August 29, 2017 WIC0219-0233;
- Exhibit P-18: _____ 2015 to 2017 Wages Compared to WIC Income Limits Spreadsheet, dated September 12, 2017, WIC0163-0174;
- Exhibit P-19: DOH Notice of Violation and Claim to _____ dated August 30, 2017, WIC0030-0044;
- Exhibit P-20: _____ Fair Hearing Request with Notice of Violation and Claim Letter, dated September 5, 2017;
- Exhibit P-21: WIC Wages to Income Limits Spreadsheet, 4 pages;

Exhibit P-22: State of Washington, Employment Security Department,
Employment History for _____, 015-2017, 3 pages;

Exhibit P-23: Washington Driver License, _____, Issue Date:
July 5, 2016, 2 pages;

The Presiding Officer admitted the following Appellant exhibits:

Exhibit A-1: Appellant Witness List;

Exhibit A-2: Minor Guardianship Form, Case No. 14PR317, El Paso
County District Court, Colorado Springs, Colorado, dated
January 20, 2015;

Exhibit A-3: Puget Sound Energy Bill and Payment History, Issued August
30, 2017, 2 pages;

Exhibit A-4: Appellant 2015 Form W-2 Wage and Tax Statement;

Exhibit A-5: Appellant 2016 Form W-2 Wage and Tax Statement;

Exhibit A-6: _____ 2015 Form W-2 Wage and Tax Statement;

Exhibit A-7: _____ 2016 Form W-2 Wage and Tax Statement;

Exhibit A-8: Appellant Declaration, 3 pages; and

Exhibit A-9: _____ Declaraion, 3 pages.

I. FINDINGS OF FACT

1.1 The federal Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides supplemental foods and nutrition education to pregnant, postpartum and breastfeeding women, infants, and young children from families with inadequate income through payment of cash grants to states that operate WIC food delivery systems. The Department of Health (DOH) administers the WIC Program in the state of Washington. The DOH WIC operations are to comply with the most current versions of 7 C.F.R. § 246, RCW 43.70.120, and WAC 246-790-001.

1.2 Appellant is married and has lived in the state of Washington since June 2015. Appellant's husband was a soldier in the U.S. Army. In April 2017, the U.S. Army discharged Appellant's husband at JBLM. Exhibit A-9. Due to her husband's previous military assignments, the Appellant lived in the state of Colorado prior to moving to Washington. Appellant initially participated in the federal WIC Program while living in Colorado, then transferred her WIC participation to Washington after her move.

1.3 On Jan 20, 2015, Appellant became the legal guardian of her 13-year old nephew. Appellant had physical custody of her nephew between January 2015 and August 2017. Appellant also has two other minor children: HJH and another child. HJH was born on September 21, 2015. Appellant received state of Washington administered WIC benefits on behalf of HJH.

1.4 Appellant began receiving state of Washington WIC benefits in September 2015. Appellant's state of Washington WIC Program periods of eligibility were between September 28, 2015 and September 30, 2016, and between October 1, 2016 and September 30, 2017. Exhibit P-6, page 1. During her periods of eligibility, Appellant received WIC checks valued at \$2,545.28. Exhibit P-8, page 9.

1.5 Appellant signed three WIC "Rights and Responsibilities" forms, one on July 21, 2015, the second on September 28, 2015, and the third on October 21, 2015. Exhibit P-9, pages 1-3. Appellant admits the signatures on these three forms are her signatures. Appellant's WIC record contains a fourth Rights and Responsibilities form dated September 20, 2016. Compared to the earlier dated forms, the signature on the fourth form does not appear to be Appellant's signature. Appellant denies the signature

on the September 20, 2016 form is her signature. Exhibit P-9, page 4. In signing the three WIC forms in Exhibit P-9, Appellant agreed to comply with multiple WIC rules, including the following:

- Provide true and complete information regarding her identity, pregnancy status, and address.
- Provide true and complete information regarding her household income.
- Provide true and complete information regarding the number of people living in her household, and
- Not swear, yell, harass, threaten, or physically harm WIC or store staff.

1.6 At a March 23, 2017 WIC appointment between JBLM WIC staff and the Appellant, WIC staff asked the Appellant if she was employed. Appellant initially stated she was working, then stated she was not working. When asked about her income, Appellant indicated she made \$200, then indicated she didn't know how much she made. See Exhibit P-6, pages 5-6 and 16-17, and Exhibit P-8, page 10.

1.7 Based on Appellant's March 23, 2017 initial statement that she was employed, WIC staff made multiple subsequent requests for proof of Appellant's income. While Appellant provided military leave and earnings statements from different months of her husband's military service, Appellant repeatedly failed to provide any written proof of her income from her employment at Massage Envy. See *WIC Staff Notes*, Exhibit P-8, pages 3-6, 10.

1.8 Appellant has resided for varying lengths of time at multiple addresses in Washington while receiving WIC benefits. Her residences included locations in Graham, Spanaway, Yelm, and JBLM. As stated in her Rights and Responsibilities forms, it was Appellant's obligation to update the WIC Program with her current address. During her

moves to her various residences in Washington, Appellant did not continuously ensure her current address was updated with the WIC Program.

1.9 In addition to her nephew and her minor children, Appellant's mother also resided with the Appellant beginning in July 2015 while the Appellant lived at her various Washington residences. Appellant's household included herself and her husband, Appellant's two minor children, Appellant's nephew, and Appellant's mother. Periodically, Appellant's mother would depart Appellant's residence and temporarily visit other family and friends. After her temporary visits, Appellant's mother would return to Appellant's residence.

1.10 Appellant's mother has a state of Washington driver's license with an Anacortes, Washington address listed as her residence. Exhibit P-23. Because of their multiple moves within the state, Appellant's mother failed to keep her address listed on her driver's license properly updated.

1.11 While living at her various Washington residences and receiving WIC benefits, Appellant's household size fluctuated between five and six members depending on whether Appellant's mother was at Appellant's residence or whether she was temporarily away. While Appellant's mother was visiting others, most of her personal belongings remained with the Appellant. The Appellant's residence remained the mother's permanent residence even during the times when the mother was temporarily visiting others. At Appellant's Graham, Washington residence, Puget Sound Energy listed Appellant's mother as the account holder for the electrical power supply going to the residence. Exhibit A-3.

1.12 During a June 2017 telephone conversation between Appellant and JBLM WIC staff, Appellant became frustrated with WIC staff. Their conversation suffered as a result. Appellant became angry with WIC staff, swore profanities at a JBLM WIC staff member, and ended their telephone conversation by hanging up on the staff member. Exhibit P-8, pages 13, 17.

1.13 On August 31, 2017, the Program sent Appellant a Notice of Violation and Claim (Notice). The Notice was sent via certified mail to Appellant's Graham, Washington address. Appellant's Notice was delivered on September 5, 2017. Appellant's husband signed the certified mail receipt acknowledging receipt of the Notice. Exhibit P-19. The Program's Notice sent via certified mail and acknowledged by Appellant's husband constituted, at a minimum, constructive notice to Appellant.

1.14 The Notice informed the Appellant that HJH would be disqualified for a period of one year, and that a claim for reimbursement was being assessed against her in the amount of \$2,545.28. Exhibits P-19, P-17. The amount of \$2,545.28 was properly assessed as the full value of WIC program benefits Appellant received on HJH's behalf during the time period when Appellant failed to provide information regarding her complete household income. Exhibit P-8, page 9, and Exhibit P-17, pages 1-3. The WIC Program is required to establish a claim against a participant for the full value of program benefits if it determines that a participant improperly obtained program benefits as the result of a participant violation. 7 C.F.R. § 246.23(c)(1)(i).

Credibility Findings

1.15 After considering all of the testimony and documentary evidence presented, the Presiding Officer determined the WIC Program's version of events regarding the reporting of household income to be more credible, and the Appellant's version to be unpersuasive. Appellant's testimony that she informed JBLM WIC staff of her income was not persuasive. Appellant's explanations were unpersuasive and less credible than the WIC Program's witness testimony and documentation regarding the Program's attempts to obtain written proof of Appellant's complete household income.

1.16 Appellant's explanation that her household included her mother even though her mother periodically visited others was credible. The Program's arguments that Appellant's mother was not a member of Appellant's household and that the power bill failed to prove her residency with the Appellant was unpersuasive in demonstrating by a preponderance of the evidence that Appellant's household did not include Appellant's mother.

1.17 Finally, WIC Program computer screenshots show credible, contemporaneously made notes documenting the Program's attempts to obtain Appellant's complete and accurate household income. Exhibit P-6, pages 15-19. Appellant had multiple opportunities to provide the WIC Program with written proof of her complete household income, but repeatedly failed to do so.

1.18 Based on the totality of the credible evidence, the Presiding Officer finds it is more likely than not that Appellant failed to disclose her employment and provide written proof of her complete household income to the WIC Program. The Presiding Officer also

finds it is more likely than not that the Program has properly pursued a claim for reimbursement against the Appellant, and that a one-year disqualification is warranted.

II. CONCLUSIONS OF LAW

2.1 The Secretary of Health (and by delegated authority, the Presiding Officer) has jurisdiction over the Appellants' request for a fair hearing in this matter.

2.2 The WIC Program bears the burden of proving the allegations set forth in the Notice of Violation and Claim by a preponderance of the evidence. WAC 246-10-606. A preponderance of the evidence means that the proposition at issue is more probably true than not true. *Mohr v. Grant*, 108 P.3d 768, 773 (2005).

2.3 Pursuant to 7 C.F.R. § 246.2, a participant violation is defined as:

any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include, but are not limited to, deliberately making false or misleading statements or deliberately misrepresenting, concealing, or withholding facts, to obtain benefits; selling or offering to sell WIC benefits, including cash-value vouchers, food instruments, EBT cards, or supplemental foods in person, in print, or online; exchanging or attempting to exchange WIC benefits, including cash-value vouchers, food instruments, EBT cards, or supplemental foods for cash, credit, services, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer, or vendor staff; and dual participation.

2.4 7 C.F.R. § 246.23(c)(1)(i) states, in part:

If the State agency determines that program benefits have been obtained or disposed of improperly as the result of a participant violation, the State agency must establish a claim against the participant for the full value of such benefits.

.....

In addition to establishing a claim, the State agency must determine whether disqualification is required by §246.12(u)(2).

2.5 WAC 246-790-530 states, in part:

(1) When any WIC participant or caregiver deliberately violates the federal or state statutes, regulations, policies or procedures governing the WIC program, the department will initiate appropriate enforcement action which may include establishment of claims under WAC 246-790-550 or disqualification under WAC 246-790-560.

2.6 WAC 246-790-550 states, in part:

(1) If the department determines that a WIC participant has committed a violation listed in WAC 246-790-530 which involves the misuse of WIC benefits, the department shall establish a claim against the participant for the full value of such benefits.

2.7 The Program HAS NOT proved by a preponderance of the evidence that the Appellant committed a participant violation by over reporting the number of people residing in her household when she reported her mother as part of her household.

2.8 The Program HAS proved by a preponderance of the evidence that the Appellant committed a participant violation by under reporting her complete household income when she failed to provide written proof of income in violation of 7 C.F.R. § 246.2, and WAC 246-790-530. The Program has also proved by a preponderance of the evidence that the Appellant committed a participant violation by expressing profanities toward WIC staff during a telephone conversation.

2.9 The Program HAS proved by a preponderance of the evidence that as a result of her WIC Program participant violation, a one-year disqualification is warranted under 7 C.F.R. 246.12(u)(2).

2.10 Consequently, the Program is entitled to a claim for reimbursement of \$2,545.28 under 7 C.F.R. § 246.23(c)(1)(i) and WAC 246-790-550.

III. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED:

3.1 Those portions of the WIC Program's Notice of Violation and Claim alleging the under reporting of household income, and the determination that a one-year disqualification is warranted, is **AFFIRMED**.

3.2 That portion of the WIC Program's Notice of Violation and Claim alleging the over reporting of the number of household members, is **DENIED**.

3.3 The Appellant **SHALL REIMBURSE** the sum of **\$2,545.28** to the WIC Program. Pursuant to 7 C.F.R. § 246.9(k)(3), the WIC Program shall resume its efforts to collect the claim.

Dated this 3 day of November, 2017.

/s/
JERRY A. VILLARREAL, Health Law Judge
Presiding Officer

NOTICE TO PARTIES

When signed by the presiding officer, this order shall be considered an initial order. RCW 18.130.095(4); Chapter 109, law of 2013 (Sec. 3); WAC 246-10-608.

Any party may file a written petition for administrative review of this initial order stating the specific grounds upon which exception is taken and the relief requested. WAC 246-10-701(1).

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A petition for administrative review must be served upon the opposing party and filed with the adjudicative clerk office within 21 days of service of the initial order. WAC 246-10-701(3). "Filed" means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). "Served" means the day the document was deposited in the United States mail. RCW 34.05.010(19). The petition for administrative review must be filed within twenty-one (21) calendar days of service of the initial order with:

Adjudicative Clerk Office
Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to the opposing party. If the opposing party is represented by counsel, the copy should be sent to the attorney. If sending a copy to the Assistant Attorney General in this case, the mailing address is:

Agriculture and Health Division
Office of the Attorney General
P.O. Box 40109
Olympia, WA 98504-0109

Effective date: If administrative review is not timely requested as provided above, this initial order becomes a final order and takes effect, under WAC 246-10-701(5), at 5:00 pm on _____. Failure to petition for administrative review may result in the inability to obtain judicial review due to failure to exhaust administrative remedies. RCW 34.05.534.

Final orders will be reported as required by law. Final orders will be placed on the Department of Health's website, and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW). All orders are public documents and may be released.

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