

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

In the Matter of:

Master Case No. M2016-1023

Appellant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND INITIAL ORDER

APPEARANCES:

the Appellant, self-represented

Department of Health Prevention and Community Health Division,
Office of Nutrition Services,
Women, Infants and Children (WIC) Program, by
Office of the Attorney General, per
Assistant Attorney General

PRESIDING OFFICER: Matthew R. Herington, Health Law Judge

The Appellant requested a fair hearing to contest the Department of Health WIC Program's Notice of Disqualification and Claim for Reimbursement Letter, dated August 30, 2016. On October 17, 2016, the Presiding Officer (on authority delegated by the Secretary of Health) conducted a fair hearing in this matter. Disqualification and Claim for Reimbursement **AFFIRMED**.

ISSUES

- A. Did the Appellant commit a participant violation as defined in 7 C.F.R. § 246.2?
- B. Did the Program properly assess a claim in the amount of \$237.79 and seek a one year disqualification of the Appellant pursuant to 7 C.F.R. § 246.23(c)(1)(i) and 7 C.F.R. § 246.12(u)(2)?

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND INITIAL ORDER

Page 1 of 10

Master Case No. M2016-1023

SUMMARY OF PROCEEDINGS

At the hearing, the WIC Program presented the testimony of WIC Investigator. The Appellant testified on her own behalf, and did not present any other witness testimony.

The Presiding Officer admitted the following Program exhibits:

- Exhibit P-1: Copy of WIC Nutrition Program Confidential Client Information Detail Report for DB # 2, dated August 15, 2016, WIC Bates Stamped (WIC) pages WIC0076-WIC0087;
- Exhibit P-2: Copy of WIC Rights and Responsibilities signed by Appellant, dated June 9, 2016, WIC0101;
- Exhibit P-3: Copy of DOH Investigation Summary, dated July 13, 2016, WIC0016-18;
- Exhibit P-4: Copy of Transacted WIC Checks Numbers 1360400657, 1360400656, 1360381435, 1360381436, and Check History, dated respectively June 14, 2016, and May 10, 2016, WIC0097-WIC0100;
- Exhibit P-5: Copy of Facebook Advertisement for 14 cans of Similac Advance formula, WIC0019;
- Exhibit P-6: Copy of Appellant's and [redacted] DOL photos and Facebook profiles, WIC0089-WIC0095;
- Exhibit P-7: Copy of DOH Certified Letter Notice of Claim for Reimbursement with enclosures, dated August 30, 2016, WIC0002-0014; and
- Exhibit P-8: Copy of Appellant's Fair Hearing Appeal, dated September 27, 2016, six 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 Washington state, and the DOH's WIC operations are to comply with the most current version of 7 C.F.R. § 246. WAC 246-790-001; RCW 43.70.120.

1.2 The Program certified the Appellant to be a caregiver on behalf of DB-2 on June 29, 2015.¹ See Exhibit P-1. The Appellant was familiar with the WIC program, having previously acted as a WIC caregiver for three other children.

1.3 On May 10, 2016, the Program issued the Appellant two WIC checks for Similac Advance formula. The check numbers were #1360381435 and #1360381436. See Exhibit P-1 and Exhibit P-4.

1.4 Later on May 10, 2016, the Appellant used these WIC checks to purchase seven 12.4 ounce cans of Similac Advance formula from a Walmart store. The actual purchase price on check #1360381435 was \$63.12 (four cans) and the actual purchase price on check #1360381436 was \$47.34 (three cans). Thus, the total actual purchase price for the seven cans of Similac Advance formula was \$110.46. See Exhibit P-1 and Exhibit P-4.

1.5 On June 9, 2016, the Appellant signed a "Rights and Responsibilities" form. By doing so, the Appellant agreed that she would comply with multiple WIC rules. Among other things, the Appellant agreed that she would "[n]ot sell or give away [her] WIC checks, foods, or formula," would "[n]ot trade [her] WIC checks, foods, or formula

¹ DB-2 was born on June 28, 2015.

for money, credit, rain checks or other items,” and would “[n]ot post WIC items on the internet.” See Exhibit P-2.

1.6 On June 9, 2016, the Program issued the Appellant two more WIC checks. These check numbers were #1360400656 and #1360400657. See Exhibit P-1 and Exhibit P-4.

1.7 On June 14, 2016, the Appellant used these WIC checks to purchase an additional seven 12.4 ounce cans of Similac Advance formula from a Safeway store. The actual purchase price on check #1360400656 was \$72.76 and on check #1360400657 was \$54.57. Thus, the total actual purchase price for these seven cans was \$127.33. See Exhibit P-1 and Exhibit P-4.

1.8 On June 27, 2016, the Appellant posted an advertisement on a Facebook group known as “Baby bump to toddler toes exchange of Grant County.” The advertisement read, in part, as follows:

Have 14 total cans of Similac formula....Baby is now on milk, didn't realise [sic] I had this many in my closet. \$10 per can or all for \$125. FCFS, cross posted, you pick up. NOT WIC.

On July 13, 2016, WIC Investigator viewed the above Facebook advertisement. The advertisement indicated at that time that the formula had been sold. See Exhibit P-5.

1.9 Investigator subsequently compared the Appellant's Facebook profile with information in the Program's Client Information Management System (CIMS) and in the Washington Department of Licensing database. This comparison allowed Investigator to confirm that the Appellant was the individual who had posted the

Facebook advertisement. See Exhibit P-6 and P-7.

1.10 On August 15, 2016, Investigator [redacted] contacted the Appellant for an interview. During the interview, the Appellant admitted selling cans of Similac Advance. However, the Appellant contended that the specific cans she sold were purchased with personal and/or family funds rather than with WIC funds.

1.11 On September 1, 2016, the Program sent the Appellant a Notice of Disqualification and Claim for Reimbursement (Notice).² This Notice assessed a claim in the amount of \$237.79, and indicated that the Appellant could be disqualified for one year if she failed to pay the claim. See Exhibit P-7.

1.12 The Appellant appealed the Notice on September 27, 2016. In the Fair Hearing Request, Appellant represented that the formula she sold was not purchased with WIC funds. In an attached letter, the Appellant represented that: (1) cans of formula had been given to her by family members; (2) DB-2 had been transitioning to milk from formula in June 2016; (3) it took about two weeks from cashing the last WIC check for DB-2 to fully transition to milk; and (4) if the Appellant had known that it would take so long for DB-2 to transition to milk, she would not have sold the cans of formula. In addition, the Appellant attached written statements from [redacted] (the Appellant's mother) and from [redacted] (the Appellant's college-aged son).

1.13 The claim of \$237.79 is based on the actual purchase prices of seven cans of Similac Advance formula from the Walmart store (\$110.46) plus seven cans of Similac Advance formula from the Safeway store (\$127.33).

² The Notice was dated August 30, 2016.

Credibility Findings

1.14 The Appellant does not dispute that she posted on the internet, and then sold, 14 cans of Similac Advance formula. However, the Appellant argues that the formula she sold was not purchased with WIC funds. After considering all of the testimony and documentary evidence presented, the Presiding Officer finds that the Appellant's version of events is not supported by the facts in this case.

1.15 First of all, the Appellant's argument that she would not have sold the cans of formula if she had known that it would take an additional two weeks for DB-2 to fully transition to drinking milk is not consistent with the dates in this case. Here, the Appellant last used WIC checks to buy formula on June 14, 2016, and she posted the cans of formula on the internet on June 27, 2016. Thus, the Appellant used the WIC checks to purchase formula *before* she put the cans of formula for sale on the internet. As a result, the timeline of events is more consistent with a scenario where the Appellant sold the cans she had purchased with WIC checks.

The Appellant claims that both _____ and _____ also purchased cans of formula for DB-2. Written statements from both individuals indicated that cans of formula were purchased for DB-2. However, the details of such purchases are unclear from the written statements. Neither _____ nor _____ testified at the hearing, nor did the Appellant present receipts of either of these individuals to prove such purchases were made. Consequently, little weight is given to their statements.

Finally, the undisputable fact is that the Appellant posted 14 cans of Similac

Advance formula for sale on the internet just thirteen days after using WIC checks to purchase seven Similac Advance cans from a grocery store, and forty-eight days after purchasing an additional seven Similac Advance cans from another grocery store. The Appellant did not provide an explanation as to why the number of cans she sold on the internet (14) was the exact same as the number of cans she had recently purchased using WIC funds.

1.16 Based on the totality of the evidence, the Presiding Officer finds that the Program established that it is more likely than not that the Appellant used WIC benefits to purchase formula which she then deliberately sold online.

II. CONCLUSIONS OF LAW

2.1 The Secretary of Health (and by delegated authority, the Presiding Officer) has jurisdiction over the Appellant's 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 Disqualification and Claim for Reimbursement 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. § 246.12(u)(1), the WIC Program must implement procedures to control and sanction WIC participant violations. 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) requires the Program to establish a claim against a participant for the full value of Program benefits if it determines that a participant improperly disposed of Program benefits as the result of a participant violation.

2.5 Pursuant to 7 C.F.R. § 246.12(u)(2)(i), if the Program assesses a claim of \$100 or more due to a participant violation, that participant must be disqualified for one year from receiving WIC benefits.

2.6 The Program has proved by a preponderance of the evidence that the Appellant committed a participant violation by selling WIC benefits in violation of 7 C.F.R. § 246.2, and that WIC benefits have been disposed of improperly as the result of that participant violation. Consequently, the Program is entitled to a claim of \$237.79. As the claim is in excess of \$100, a one-year disqualification is appropriate in this case.

III. ORDER

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

ORDERED:

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND INITIAL ORDER

Page 8 of 10

Master Case No. M2016-1023

3.1 The WIC Program's Notice of Disqualification and Claim for Reimbursement, dated August 30, 2016, is **AFFIRMED**.

3.2 The Appellant SHALL reimburse the sum of \$237.79 to the WIC Program and is **DISQUALIFIED** from receiving WIC benefits for a period of one year. Pursuant to 7 C.F.R. § 246.9(k)(3), the WIC Program shall disqualify the Appellant for one year and resume its efforts to collect the claim.

Dated this 8 day of November, 2016.

/s/
MATTHEW R. HERINGTON, 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).

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND INITIAL ORDER

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.

For more information, visit our website at:
<http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/Hearings.aspx>