



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

February 17, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-1047

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Marsha King, HHR Specialist Sr., Program Integrity Coordinator

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

██████████,

Appellant,

v.

Action Number: 16-BOR-1047

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on February 17, 2016, on an appeal filed January 4, 2016.

The matter before the Hearing Officer arises from the November 6, 2015 decision by the Respondent to impose a twelve (12) month disqualification penalty against the Appellant from the West Virginia Women, Infants and Children (WIC) program.

At the hearing, the Respondent Appeared by Marsha King, Program Integrity Coordinator. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, the Appellant's grandmother. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Correspondence from the Office of Nutrition Services to the Appellant, dated November 6, 2015
- D-2 Copy of *Facebook* advertisement, dated June 7, 2015
- D-3 WV Crossroads Production computer screen prints containing Appellant's demographic information
- D-4 WV Crossroads Production computer screen prints containing the Appellant's signature, Transaction History and Participant Agreement
- D-5 WIC Food Reference Guide
- D-6 WV Crossroads Production computer screen prints detailing Appellant's WIC Benefit Issuance
- D-7 EBT Retail History Details

- D-8 West Virginia WIC Policy and Procedure Manual §1.06, Participant Sanctions
- D-9 USDA Policy Memorandum, outlining 7 CFR §§246.2, 246.10(b)(2)(ii)(D), 246.12(u)(1), 246.12(u)(5) and 246.23(c)(1)
- D-10 Copy of Fraud Posters for WV WIC

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a participant in the West Virginia Women, Infants and Children (WIC) program.
- 2) On November 6, 2015, the Department sent the Appellant a notification letter informing her that she and her family members were being disqualified from the WIC program for a period of twelve (12) months, beginning November 24, 2015. (Exhibit D-1)
- 3) During the time period beginning in an unknown month in 2014 and continuing through November 6, 2015, the Appellant signed an acknowledgement that she had read or been read the West Virginia WIC Participant Agreement (Participant Agreement). (Exhibit D-4)
- 4) As a condition of participation in the WIC Program, the Appellant agreed that she would abide by the conditions outlined in the Participant Agreement, including that she would “not sell or trade WIC benefits, food or formula purchased with WIC benefits. I will keep all sales receipts for food or formula identical to those issued by WIC that I privately purchase. These receipts will be documentation that I can provide to the WIC Program, if requested, to prove I am not selling or exchanging food or formula provided by the WIC Program.” (Exhibit D-4)
- 5) The Appellant’s grandmother, [REDACTED] (Ms. [REDACTED]) was the Appellant’s designated Caregiver. As the designated Caregiver, Ms. [REDACTED] was authorized to attend the Appellant’s WIC Program appointments and to use her Electronic Benefit Transfer (EBT) card to purchase WIC benefits on her behalf. (Exhibit D-3)
- 6) As the designated Caregiver, Ms. [REDACTED] was required to abide by the Participant Agreement rules executed by the Appellant.

- 7) On June 7, 2015, the Appellant's grandmother, [REDACTED], advertised fifteen (15) cans of powder Enfamil ProSobee infant formula valued in excess of One Hundred Dollars (\$100.00), by means of a *Facebook* advertisement on the internet. (Exhibit D-2)
- 8) The formula advertised by the Appellant's grandmother on *Facebook* was identical to formula distributed to the Appellant through the WIC Program. (Exhibits D-2 and D-5 through D-7)
- 9) The Department contends that the formula the Appellant's grandmother sold, or attempted to sell, was formula distributed to the Appellant under the WIC Program. (Exhibits D-5 through D-7).
- 10) The Appellant's grandmother disputed the Department's assertion that she sold WIC Program formula, and testified that the formula she advertised and sold on *Facebook* was given to her by her sister-in-law who lives in the state of Ohio.
- 11) The Appellant contends that she has never sold or attempted to sell benefits she received through the WIC Program.

APPLICABLE POLICY

West Virginia WIC Policy and Procedure Manual §1.06.A. establishes procedures for the assignment of appropriate sanctions for participant abuses. When a payee or proxy attempts to sell or exchange or sells and exchanges formula for cash or other items of value to other persons or entities, the participant is subject to mandatory disqualification from the WIC program.

West Virginia WIC Policy and Procedure Manual §1.06.F.3(d) and Code of Federal Regulations 7 CFR §246.12(u) establish that the State Agency is to calculate the amount owed to the program by obtaining the redemption price of the formula at the time the vouchers were redeemed. If the determined amount is in excess of One Hundred Dollars (\$100.00), the disqualification is a mandatory twelve (12) months.

West Virginia WIC Policy and Procedure Manual §2.01.B, indicates that during each certification appointment, each participant, parent/guardian or caretaker will have an opportunity to read and/or be read the participant's rights and responsibilities prior to electronically signing the Participant Agreement.

West Virginia WIC Policy and Procedure Manual §2.10.A, requires that the Participant Agreement (WIC-05) be read to or by the parent/guardian/caretaker, and establishes that selling, trading, or giving away WIC benefits or food purchased with WIC benefits will result in disqualification from the WIC Program. The participant is required to provide an electronic signature to verify they have been informed of their rights and responsibilities.

West Virginia WIC Policy and Procedure Manual §3.12, establishes that the parent participant can authorize a caretaker to receive and/or redeem benefits and to attend certification and/or

nutrition appointments. If the caretaker is not present for instruction, the parent is instructed that it is their responsibility to inform the caretaker of the proper WIC benefit use.

Code of Federal Regulations 7 CFR §246.12(u)(iii) permits State agencies to terminate mandatory disqualifications, allowing participants to reapply for benefits prior to the expiration of the established sanction, if full restitution is made, a repayment is agreed upon or when the State or local agency approves the designation of a proxy when the participant is an infant or child under the age of eighteen (18).

DISCUSSION

The Appellant did not dispute that she designated her grandmother as a Caretaker for the receipt of WIC Program benefits, nor did she dispute that her grandmother had the authority to attend WIC Program appointments and redeem her WIC Program EBT benefits as the designated Caregiver. The Appellant did not dispute that she provided her electronic signature acknowledging that she understood the WIC Participant Agreement, that she would not sell or trade WIC benefits and would keep all sales receipts for formula identical to those issued by WIC that were privately purchased.

The Appellant's grandmother (Ms. [REDACTED]) did not dispute that she sold formula (Enfamil ProSobee), identical to the formula received by the Appellant through the WIC Program. The Appellant's contention that the formula she sold via a *Facebook* advertisement was received from her sister-in-law who lived out-of-state was unconvincing. The sister-in-law was not present for the telephone hearing and provided no written statement that she had given the formula to Ms. [REDACTED].

Policy establishes that (1) it was the Appellant's responsibility to inform Ms. [REDACTED] of proper benefit usage, including that the sale or attempted sale of formula received through the WIC Program is not permissible; (2) it was the Appellant's responsibility to inform Ms. [REDACTED] that she would be required to provide receipts documenting the sale of privately-purchased formula which was identical to formula received through the WIC Program; and that (3) the inappropriate actions taken or abuses committed by Ms. [REDACTED] as the designated Caretaker could result in the termination of the Appellant's benefits and/or civil or criminal prosecution.

The Appellant's contention that she never sold her WIC Program benefits may be true, however, it does not absolve her of responsibility for the actions taken by her designated Caregiver.

CONCLUSIONS OF LAW

- 1) Applicable policy provides that when a WIC participant (or their designated Caregiver) has, by a preponderance of evidence, sold or attempted to sell WIC formula for cash or other items of value, the Department is required to impose a penalty. When the value of those benefits is in excess of One Hundred Dollars (\$100.00), a mandatory twelve (12) month disqualification penalty is imposed.
- 2) The totality of evidence supports that the Enfamil ProSobee infant formula advertised for sale on *Facebook* in June 2015, was obtained from West Virginia WIC funds. There is insufficient evidence to support the designated Caretaker's contention she was selling formula given to her by her sister-in-law.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to apply a twelve (12) month disqualification penalty against the Appellant.

ENTERED this ____ Day of February 2016.

Donna L. Toler
State Hearing Officer