



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

June 12, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 12, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to disqualify you from the West Virginia WIC [Women, Infants, and Children] Program for three (3) months.

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.

Eligibility for the West Virginia WIC Program is based on current policy and regulations. Some of these regulations state that staff will scan the classified ads in the newspapers and the "Traders Guide" type local papers to check "Formula for Sale" ads. When a WIC participant is found to have attempted to sell or actually sold or exchanged food instruments, food or formula for cash or other items of value to other persons or entities, the participant is to be disqualified for a three (3) month period on a first (1st) offense. (West Virginia WIC Policy and Procedures §1.06, A, 2)

The information submitted at your hearing demonstrates that you placed an ad on *Facebook* in your infant child's name to sell WIC formula in the amount of forty dollars (\$40.00) during a month for which you had received identical WIC formula.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to impose a mandatory three (3) month disqualification against you.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Terri Grimm, [REDACTED] WIC Office

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1170

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

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report 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 hearing convened on June 12, 2012.

II. PROGRAM PURPOSE:

The mission of the Office of Nutrition Services' Women, Infants, and Children (WIC) Program is to improve the Health of Women, Infants, and Children in West Virginia through the provision of nutrition and breast feeding counseling, health monitoring and the provision of nutritious supplemental foods.

III. PARTICIPANTS:

-----, Claimant

-----, Claimant's witness

Cindy Pillo, Department representative

Tonya Shell, Department's witness

Terri Grimm, Department's witness

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to impose a three (3) month disqualification penalty against the Claimant.

V. APPLICABLE POLICY:

West Virginia WIC Policy and Procedure 1.06, A, 2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of *Facebook* Ad dated February 29, 2012
- D-2 History Infant Certification Form
- D-3 Food Instrument History printout
- D-4 SOLUTRAN SOAR Vouchers for Similac Soy Isomil for January 16, 2012 and Proof of delivery date
- D-5 Printout showing Food Package # 3011 equals Soy protein, lactose-free infant formula
- D-6 Disqualification Letter for Program Abuse dated April 25, 2012
- D-7 Interdepartmental Memo dated April 30, 2012
- D-8 WIC Participant Agreement dated October 21, 2011 and December 15, 2011
- D-9 Request for Proxy Form dated October 21, 2011
- D-10 Participant Sanctions – West Virginia WIC Policy Section 1.06
- D-11 Memo from United States Department of Agriculture dated February 10, 2012

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was a participant in the West Virginia (WV) Women, Infants, and Children (WIC) program when on or about April 25, 2012, the Department sent her a notification letter (D-6) informing her that she and her family members were being disqualified from the WV WIC program beginning May 25, 2012, and that the disqualification would be effective for three (3) months. She was also informed that she would not be automatically reinstated for the program, but that she could reapply for benefits after August 24, 2012.

- 2) The Department contends that the Claimant attempted to sell four (4) cans of powder *Similac Soy Isomil* by means of a *Facebook* ad on the internet. The Department presented as evidence (D-1) a copy of the ad placed under the *Facebook* user name of -----n, which is the Claimant's infant child's name. The ad was listed on February 29, 2012.
- 3) The Department presented evidence (D-2, D-3, D-4, and D-5) that shows the Claimant signed for and picked up nine (9) cans of *Similac Soy Isomil* for her infant child on January 16, 2012, at the WIC office. Testimony from Terri Grimm, who is the WIC Program Coordinator, indicated that nine (9) cans of formula were considered an amount that would last the Claimant for one (1) month. Ms. Grimm added that the Claimant's type of formula was changed on February 24, 2012, to a different brand.
- 4) The Department presented evidence (D-10 and D-11) that shows it is required to search online websites such as *Facebook* in an attempt to determine when individuals who receive WIC are selling the products to other persons or entities. The Department's policy requires that a three (3) month disqualification penalty be imposed when first time offenders are determined to be selling WIC.
- 5) The Department presented evidence (D-8) which shows the Claimant was made aware of the policy which precludes selling or trading WIC vouchers, food or formula purchased with WIC vouchers.
- 6) The Claimant contends that she did not sell WIC formula. She admitted that she placed the *Facebook* ad in question in her child's name; however, she stated that the formula she was attempting to sell was not WIC formula. She stated that her father sometimes purchased formula for her child and that she was trying to sell the formula he bought for her child because the child's formula was changed to a different type on February 24, 2012, for health reasons. When asked how she could determine that the formula she was attempting to sell was not WIC formula, she stated that sometimes she would put formula bought by her father on a different shelf. However, she could not say for certain that her father bought the formula in question.
- 7) The Claimant's father, -----, testified that he sometimes bought formula and took to his daughter on occasion. He stated that he does not know for certain that he bought the formula in question, but added that he believes his daughter as she has never lied to him. He stated that he may have bought formula during January 2012 but does not have receipts and he does not recall the specific type of formula he purchased.
- 8) The West Virginia WIC Policy and Procedure Manual §1.06, A, 2, provides in pertinent part:
 - A. The Local Agency will assign appropriate sanctions for the following payee/proxy abuses upon instruction by the State Agency. Abuses (1-7) may also be (sic) result in the repayment to the State WIC Agency the value of food benefits improperly received/disposed of. The disqualification period for these abuses may also result in disqualification of up to one year, for a monetary claim of \$100.00 or more.

2. Attempting to sell, or actually selling, or attempting to exchange, or actually exchanging food instruments, food, or formula for cash or other items of value to other persons or entities. 1st Offense – 3 month disqualification

3. As time and staff are available, scan the classified ads in the newspapers and the “Trader’s Guide” type local papers to check “Formula for Sale” ads. Local staff should check via the STORC system to determine if this is a WIC participant in their area. Staff may then call the number listed and ask general questions regarding the ad such as price, amount, expiration date, name and address of person selling the formula.

- a. Verify if the seller is a WIC participant who was issued this type of formula by reviewing the Food Instrument History.
- b. Forward all information regarding this abuse to the State WIC Agency Food Delivery Coordinator for determination of sanction.
- c. If the seller is a WIC participant who was issued and redeemed FI’s for formula, the State Agency will advise the Local Agency Director to issue a Disqualification for Program Abuse letter to the participant. The “preponderance of evidence” suggests that this is WIC formula; therefore, it is the responsibility of the participant to prove it is not WIC formula.
- d. The SA [State Agency] will calculate the amount owed the Program by obtaining the redemption price of the formula or food at the time the FI’s were redeemed. A letter will be sent to the participant which will detail the amount that must be repaid to the West Virginia State WIC Program. If this amount exceeds \$100.00, the disqualification period will be a mandatory twelve (12) months.

VIII. CONCLUSIONS OF LAW:

- 1) The purpose of this hearing is to determine whether the Department correctly applied a three (3) month disqualification penalty against the Claimant.
- 2) Applicable policy provides that once staff determines that a WIC participant has, by a preponderance of evidence, sold or attempted to sell WIC formula for cash or other items of value to other persons or entities, the Department is required to impose a three (3) month disqualification penalty for a first (1st) offense. It is the responsibility of the participant to prove it is not WIC formula.
- 3) The Claimant acknowledged that she placed the *Facebook* ad for sale of the *Similac Soy Isomil* formula during February 2012; however, she stated that the formula she was attempting to sell came from formula her father purchased for her infant child and that it was not WIC formula.

She did not have receipts to show that the purchase was made privately, and her testimony in regard to keeping the WIC formula separate from that purchased privately was not convincing. Although the Claimant's father testified that he purchased formula at times for the Claimant, he had no receipts and he could not definitively say whether the formula he purchased was *Similac Soy Isomil*.

- 4) The totality of the evidence supports that the *Similac Soy Isomil* formula the Claimant placed for sale during February 2012 was obtained from WV WIC funds. The evidence shows the Claimant received one (1) month's supply of WV WIC *Similac Soy Isomil* formula on January 16, 2012. There is insufficient evidence to support that the Claimant was attempting to sell privately purchased formula.
- 5) As a result of all the above conclusions, the Department was correct in applying a three (3) month disqualification penalty against the Claimant.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the ruling of the State Hearings Office to **uphold** the Agency's decision to apply a three (3) month disqualification penalty against the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of June 2012.

**Cheryl Henson
State Hearing Officer**