



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661**

**Earl Ray Tomblin
Governor**

**Rocco Fucillo
Cabinet Secretary**

December 14, 2012

RE: ---- v. WV DHHR
ACTION NO.: 12-BOR-2210

Dear Ms. ----:

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.

If you believe the decision was reached in error, you may appeal. See the attached explanation of Claimant's Recourse.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
----, ----

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 11-BOR-2210

**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 November 2, 2012, at the Lincoln County office of the WV DHHR in Hamlin, WV, on a timely appeal filed September 17, 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

----, ----, Department's Representative

----, ----, Department's Witness

----, ----, Department's Witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and a member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to impose a three-month sanction against the Claimant.

V. APPLICABLE POLICY:

West Virginia WIC Policy and Procedure Manual, 1.06

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Disqualification Letter for Program Abuse dated September 11, 2012
- D-2 Facebook notice from Claimant advertising certain items of baby food for sale
- D-3 History Child Certification Form for Claimant's daughter
- D-4 Pages from food code book used by WIC workers to prescribe food packages
- D-5 Food Instrument History report dated September 10, 2012
- D-6 Food Instrument vouchers for December 7, 2011 through April 6, 2012
- D-7 Food Instrument receipt stubs signed by Claimant
- D-8 West Virginia WIC Participant Agreement dated June 1, 2011, March 7, 2012, and April 4, 2012
- D-9 Proxy Form allowing Claimant to designate other individuals to spend and obtain Food Instruments
- D-10 West Virginia WIC Policy & Procedure Manual Section 1.06, effective January 1, 2011
- D-11 US Department of Agriculture (USDA) Policy Memorandum #2012-1, dated February 10, 2012

Claimant's Exhibits:

- C-1 Written statement by ----, undated
- C-2 Written statement by ---- ----, dated October 31, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant was an active participant in the West Virginia Women, Infants, and Children (hereinafter WIC) program. On September 11, 2012, the Department sent the Claimant a notification letter (Exhibit D-1) which included the following pertinent information:

You and all your family members are being disqualified from the West Virginia ---- beginning October 7, 2012, for a time period of three months for attempting to sell WIC foods. The value of the formula you are attempting to sell is \$49.21. You must pay back [to] the ---- this amount or return these unused foods to the local WIC Office. You may reapply for benefits after January 4, 2012.

The reason for this disqualification is: Attempting to sell or actually selling food or formula for cash to other person or entities.

You may reapply for program benefits at the end of the disqualification period. However, you will not be automatically reinstated.

You have the right to appeal this decision by writing, phoning or visiting the WIC Office before November 4, 2012.

- 2) The Department contends that the Claimant attempted to sell certain baby food items by placing a notice (Exhibit D-2) on Facebook, a social networking internet site. The notice contains a photograph of baby food items and reads as follows:

Lot of 7 boxes cereal, 16 jars vegetables, 43 jars of fruit baby food. My baby is done with baby food. Expiration dates good until Oct and Nov 2013 and some Jan 2014. \$30 meet at ----, near ----].

The resolution of the photograph accompanying the notice is poor. It is not possible to distinguish one baby food label from another or one variety of baby cereal from another. No inventory numbers, lot numbers or other identifying numbers are visible.

- 3) Department's Representative stated that all WIC employees are encouraged to observe advertisements in local classified ad newspapers that go by names such as "Trade 'n Sell," "Trader's Guide," and others, and to observe notices and advertisements in various social media internet sites such as Craigslist.com or Facebook, to determine if individuals who may be ---- participants are attempting to sell food items purchased by WIC vouchers. She stated that pursuant to this directive, a WIC worker faxed a printed version of Claimant's Facebook notice to her. Department's Representative stated that as a participant in the ----, Claimant signed a WIC Participant Agreement (Exhibit D-8) which states, "I will buy only the foods listed on my WIC vouchers. I will use these foods only for the person on the program . . . I will follow the rules when using WIC vouchers. I will not sell or trade WIC vouchers, food or formula purchased with WIC vouchers."
- 4) Claimant did not dispute the Department's position that she placed a notice on Facebook in order to sell certain baby food items, and did not dispute the Department's position that the Facebook screen print (Exhibit D-2) was the notice she had posted. She testified that a buyer contacted her as a result of this notice, and she sold all of the items in the notice to this buyer. She did not dispute the Department's testimony that she had signed WIC Participant Agreements (Exhibit D-8) indicating she was aware that reselling foods purchased with ---- vouchers was a violation of program policy. She testified that the foods indicated in her Facebook notice were not purchased with WIC vouchers. She stated that her mother provided day care for her, and as such had purchased baby food to have at her home when she kept Claimant's child. She stated that her mother-in-law similarly provided day care for another baby, and the mother-in-law had purchased baby food to have at home when she kept this child. She stated that in both of these situations, her child and the child kept by her mother-in-law had

grown to an age when they transitioned to food for more mature toddlers, so the baby food was no longer needed. She stated that neither her mother nor her mother-in-law owned a personal computer or was an experienced computer user, so they asked her to use her computer access to sell the leftover baby food. Claimant stated that she had purchased some of the food items in the notice, but they were not purchased with WIC vouchers. Claimant indicated on the photograph a particular food item which she stated was a can of dried plums and was not a WIC-approved food item. Department's Representative acknowledged that the item was dried plums and acknowledged this was not a WIC-approved item.

- 5) Claimant submitted into evidence two written statements which she testified were written by her mother, ----, and her mother-in-law, ---- ----. The letter from her mother (Exhibit C-1) states as follows:

To whom it may concern:
[Claimant] had my permission to sell the baby food I bought for [Claimant's daughter].

The letter from Claimant's mother-in-law (Exhibit C-2) states as follows:

To WIC Administrators:

I ---- ---- gave my daughter-in-law numerous baby food items to sell. My granddaughter was finished with the items and [the food was] was going to go to waste. [Claimant] was given permission to sell any baby food that we had left over. I myself had purchased those items which included vegetables and fruits and dinners.

- 6) The West Virginia WIC Policy and Procedure Manual §1.06.A.2 (Exhibit D-10) states in pertinent part:

The local agency will assign appropriate sanctions for the following payee/proxy abuses upon instruction by the State Agency. Abuses may also 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; First offense; 3 month disqualification

- 7) The West Virginia WIC Policy and Procedure Manual §1.06.F.3 (Exhibit D-10) states in pertinent part:

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 [FI] 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 FIs for formula, the State Agency will advise the Local Agency Director to issue a Disqualification for Program Abuse letter to the participant.
- d. The [State Agency] will calculate the amount owed the Program by obtaining the redemption price of the formula or food at the time the FIs were redeemed. A letter will be sent to the participant which will detail the amount that must be repaid to the West Virginia State ----. If this amount exceeds \$100.00, the disqualification period will be a mandatory twelve (12) months.

VIII. CONCLUSIONS OF LAW:

- 1) Applicable policy provides that once staff determines that a WIC participant has sold or attempted to sell food purchased with WIC vouchers, the Department is required to impose a three-month disqualification penalty.
- 2) The Claimant acknowledged that she placed a Facebook notice for the sale of certain baby food items; however, she stated that the items came from her mother, her mother-in-law, and from her supply of items purchased with her own money. The Claimant presented written evidence in the form of letters from her mother and her mother-in-law to support her position that the food items were not purchased with ---- vouchers.
- 3) Department’s Representative acknowledged that at least one item in the Facebook notice was for canned dried plums, which is not a WIC-approved baby food.
- 4) There were no visible identifying code numbers or inventory numbers in the Facebook notice which could allow a person to distinguish one food item from another or to indicate that any particular food item was purchased using a WIC voucher.

- 5) Because it was not possible to identify any particular item in the Facebook notice as an item purchased using a WIC voucher, the Department was incorrect in imposing a sanction on Claimant's WIC benefits.

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 **reverse** the Agency's decision to apply a three-month disqualification penalty against the Claimant's ---- participation.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of December, 2012.

**Stephen M. Baisden
State Hearing Officer**