



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

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

May 25, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 10, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to disqualify you from the West Virginia Women, Infants, and Children (WIC) 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. Individuals who attempt to sell or actually sell food purchased under the WIC Program for cash or other items of value are disqualified from WIC participation for three (3) months. (West Virginia WIC Policy and Procedures Manual Section 1.06)

Information presented at your hearing demonstrates that you attempted and/or sold baby food and were heard by a WIC staff member stating that you had sold the food.

It is the decision of the State Hearing Officer to **uphold** the Department's action to impose a three-month disqualification period from the WIC Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sandra Miller, WIC Program

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-840

**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 the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This hearing convened on May 10, 2012 on a timely appeal filed February 28, 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 mother

Sandra Miller, Director, [REDACTED] WIC Office

Cindy Pillo, Assistant State Director, West Virginia WIC Program

Presiding at the hearing was Pamela L. Hinzman, 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 WIC Program sanction against the Claimant.

V. APPLICABLE POLICY:

West Virginia WIC Policy and Procedures Manual Sections 1.06.A.2 and 1.06.F.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Facebook advertisement
- D-2 History Child Certification Form
- D-3 Memorandum from ----- to Cindy Pillo dated February 21, 2012
- D-4 Food Instrument History for -----
- D-5 Disqualification Letter For Program Abuse dated February 23, 2012
- D-6 Redeemed Food Instruments and stubs for the period of September 3, 2011-January 6, 2012
- D-7 Signed West Virginia WIC Participant Agreement dated October 7, 2011 and December 29, 2011
- D-8 Signed West Virginia WIC Participant Agreement dated July 1, 2010 and February 3, 2011
- D-9 Information from WIC Food Code book regarding food packages
- D-10 West Virginia WIC Policy and Procedures Manual Section 1.06
- D-11 WIC Policy Memorandum dated February 10, 2012
- D-12 Notes created by Cindy Pillo regarding telephone call history
- D-13 Notes created by Sandra Miller regarding case history

Claimant's Exhibits:

- C-1 Electronic mail transmissions between Claimant and ----- dated June 22, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant was an active participant in the West Virginia Women, Infants, and Children (WIC) Program on February 23, 2012, when the Department sent her a Disqualification Letter For Program Abuse (D-5), which states, in pertinent part:

You and all your family members are being disqualified from the West Virginia WIC Program beginning April 7,

2012. You will be disqualified for a time period of three months; you may reapply for benefits after July 7, 2012.

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

- 2) The Department contends that the Claimant attempted to sell a large quantity of jarred baby food - purchased with WIC benefits - by placing an advertisement (D-1) on a Facebook (social networking website) on-line yard sale in February 2012. The advertisement was placed under the name "-----" and states as follows:

I have a big bag of baby food in jars for sale, [sic] there are alot [sic] of small ones and a few big jars-\$15 for all would [sic] like gone today [sic]

- 3) Cindy Pillo, Assistant Director of the West Virginia WIC Program, testified that the Department became aware of the Claimant's Facebook advertisement and determined that the Claimant was a current WIC recipient. Ms. Pillo stated that she called the telephone number listed in the Claimant's case record on February 16, 2012, but received no answer (see Exhibit D-3). Ms. Pillo called the number again on February 21, 2012 and received no answer, however, she received a call back later in the day and an individual asked if she had attempted to call ----- telephone number. Ms. Pillo responded, stating that she had called to determine whether the baby foods were still for sale. Ms. Pillo documented the conversation in Exhibit D-3, writing:

The person answering the phone said "-----, do you still have the baby food for sale. And someone in the background said, no she had already sold them. He stated no, she has already sold them". [sic] Our records indicated that this family has a ----- address and that ----- proxy is -----.

A review of the Department's records (D-2, D-4 and D-6) indicates that the Claimant had been receiving Food Package 3001 for her infant daughter, ----- (born January 18, 2011). This package included Similac Earlyshield powder formula (see Exhibit D-9). In addition, Exhibit D-9 states that infants receive 24 ounces of infant cereal and 32, four-ounce jars of baby food (infant fruit/vegetables) per month beginning at six months of age. Eight redeemed Food Instruments (vouchers) (D-6) issued to the Claimant from September 2011 to January 2012 indicate that the Claimant received 128, four-ounce containers of baby food (any brand) during that time period.

Sandra Miller, [REDACTED] WIC Director, testified that the Claimant telephoned her on February 28, 2012, regarding the disqualification letter she received (see Exhibit D-13). At that time, the Claimant contended that she was not selling baby food and did not understand why she received the letter. Ms. Miller informed the Claimant that WIC staff

had observed her Facebook advertisement and that selling baby foods provided by WIC was not permissible. At that time, the Claimant responded that the baby food listed for sale was not purchased with WIC vouchers and had been provided to her by a family member when she had moved from one location to another. She contended that when she informed the family member she could not use the food, the family member told her to sell it.

Ms. Pillo spoke with the Claimant via telephone on March 21, 2012, and recorded information concerning the conversation in Exhibit D-12. During the conversation, the Claimant indicated she was selling large jars of food (not provided by WIC).

- 4) The Department presented evidence (D-7 and D-8) to demonstrate that the Claimant signed the West Virginia WIC Participant Agreement on July 1, 2010, February 3, 2011, October 7, 2011 and December 29, 2011. By signing the forms, the Claimant agreed to follow WIC regulations, indicating that she would not sell or trade WIC drafts, food or formula purchased with the drafts.
- 5) The Claimant testified that she never denied selling baby food, but informed the WIC staff that the food she was selling was not purchased through WIC. The Claimant stated that she is currently five months pregnant, her family has little income at this time, and the family has been selling household items to meet expenses. During the hearing, the Claimant provided a bag of baby food – containing a mixture of large and small jars – that her child would not eat. She said the bag contained some of the remaining jars she wished to dispose of, contending that the other jars in question were not sold, but given to another individual. The Claimant stated that the baby food she had listed in the advertisement was given to her by family members and some of the jars were obtained from an individual who responded to an advertisement she placed on Craigslist in June 2011 in which she had sought free baby food. As a result of the Craigslist ad, the Claimant had been given about 70 jars of baby food by ----- . The Claimant provided an electronic mail transmission (C-1) to document her conversation with ----- in regard to the issue. The Claimant also contended that her husband was not home at the time Ms. Pillo reportedly telephoned her residence and spoke to a male to inquire about the baby food advertisement.

-----, the Claimant's mother, testified that her daughter abides by the law and would not attempt to sell baby food provided by the WIC Program. She stated that she knows her daughter used all of the baby food provided by WIC because she obtained mostly fruit since the child would not eat vegetables. ----- stated that the Claimant had asked her about selling baby foods the child did not eat, and ----- felt it would be acceptable to sell food not obtained through WIC. Under cross-examination from Ms. Pillo, ----- indicated that she did not keep receipts for baby food that she had personally purchased for her granddaughter.

- 6) West Virginia WIC Policy and Procedure Manual Section 1.06.F.3 (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 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.

- 7) West Virginia WIC Policy and Procedure Manual Section 1.06.A.2 (D-10) states that the penalty for a first offense of attempting to sell or actually selling WIC food instruments, food or formula for cash or other items of value is a three-month disqualification from the WIC Program.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that the first-offense penalty for attempting to sell or actually selling WIC food instruments, food or formula for cash or other items of value is a three-month disqualification from the WIC Program.
- 2) While the Claimant has denied selling or attempting to sell baby food obtained through the WIC Program, WIC staff discovered an on-line advertisement she placed on Facebook in February 2012 for the sale of several small and a few large jars of baby food. When Ms. Pillo telephoned the Claimant's residence on February 21, 2012, to inquire about the baby food, she spoke to a male who asked "-----" if she still had the food for sale. "-----" was heard by Ms. Pillo replying that the food had already been sold. After receiving a disqualification letter, the Claimant spoke with Ms. Pillo and told her that she was selling the large jars (not supplied by WIC), but still had them. During the hearing, however, the Claimant testified that she did not sell any baby food, but gave it away instead.

Evidence provided by the WIC staff verifies that the Claimant received 128 jars of baby food from the program between September 2011 and January 2012. As the Claimant has provided inconsistent information concerning the disposition of the baby food, her testimony is not credible and the Department's contention that she sold baby food acquired through WIC is reasonable.

- 3) The Department acted correctly in applying a three (3)-month sanction to the Claimant's WIC benefits.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Agency's decision to apply a three (3)-month WIC 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 25th Day of May 2012.

**Pamela L. Hinzman
State Hearing Officer**