

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

In the Matter of:)	Master Case No. M2010-1622
)	
VIRGINIA OCAMPO,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Petitioner.)	AND FINAL ORDER
_____)	

APPEARANCES:

Petitioner, Virginia Ocampo, pro se

Department of Health Community Family Health, Community Wellness and Prevention, WIC Program (WIC Program), by
Office of the Attorney General, per
Oscar E. Chaves, Assistant Attorney General

PRESIDING OFFICER: John F. Kuntz, Review Judge

On March 25, 2011, the Presiding Officer (on authority delegated by the Secretary of Health) conducted a fair hearing in this matter. The Petitioner requested a fair hearing to contest the WIC Program's disqualification and claim letter, dated November 23, 2010.

ISSUES

- A. Whether the Petitioner engaged in the trafficking of a WIC check for the sum of \$5.00 and then deposited the check for \$67.97 in her bank account?
- B. Must a vendor be disqualified from the WIC program for six years for one incident of buying or selling a WIC check for cash under 7 CFR 246.12(I)(1)(ii)(A)?

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL ORDER

SUMMARY OF THE PROCEEDING

The WIC Program presented the testimony of Tim Husted, WIC Investigator; and Becky Waite, WIC State Operations Section Manager. The Petitioner testified on her own behalf. Marcela Henderson translated the proceedings.

The Presiding Officer admitted the following exhibits:

Exhibit P-1: WIC contract for period from April 1, 2009 to March 31, 2012, signed by Petitioner and WIC program;

Exhibit P-2: WIC Contract Termination Letter, dated November 1, 2010;

Exhibit P-3: Compliance Buy Form and Report by WIC Investigator Tim Husted; and

Exhibit P-4: WIC check after processed through Petitioner's bank.

I. FINDINGS OF FACT

1.1 The Petitioner signed a WIC contract on March 10, 2009, to become a WIC vendor. The period of performance under the contract was to be from April 1, 2009 to March 31, 2012. By signing the WIC contract, the Petitioner agreed that she would fully comply with the following: the contract provisions contained in the WIC contract; the WIC Retailer Handbook; 7 CFR sec. 246; chapter 246-790 WAC; and any changes to federal or state laws, regulations, policies, and procedures governing the WIC program during the term of the contract (April 1, 2009 to March 31, 2012). Exhibit P-1, page 2.

1.2 The WIC program performed compliance buys at the Petitioner's store in July, August, and September 2010. A compliance buy is when the WIC program representative acts covertly to purchase WIC checks or attempts trafficking. Several

vendor violations occurred during each compliance buy, including the Petitioner's failure to follow proper procedure for processing WIC checks (failing to enter the amount of the purchase before the WIC purchaser signed the check) and by depositing checks for an amount greater than the amount actually purchased during the transaction.

1.3 During the September 2010 compliance buy, the Petitioner bought a WIC check from WIC Investigator Tim Husted for \$5.00. The WIC check in question authorized the WIC purchaser to buy four cans of Similac Advance (powdered baby food formula). When the Petitioner purchased the WIC check for \$5.00, the actual purchase price box was blank. The next day, the Petitioner processed the WIC check by entering the purchase price amount box in the amount \$67.97. See Exhibit P-4. The Petitioner deposited the WIC check into her bank account in the amount of \$67.97.

1.4 The WIC program notified the Petitioner by letter dated November 1, 2010, of the results from the compliance buys above. Based upon those results, the WIC program terminated the Petitioner's contract and provided specific basis for disqualifying the Petitioner from the WIC program.

1.5 The Petitioner subsequently requested a hearing in relation to the WIC program's determination to disqualify the Petitioner. In her request for a hearing, the Petitioner challenges the WIC program's finding that she bought a WIC check for cash on September 9, 2010.

1.6 The Petitioner admitted at the hearing that she purchased the WIC check for \$5.00 and deposited the check into her bank account in the amount of \$67.97. The Petitioner was concerned that her actions did not comply with the requirements of her

WIC contract. The Petitioner discussed this incident with her husband, who advised her to contact the WIC program for guidance. Despite her concerns, the Petitioner did not contact the WIC program for guidance and went ahead and deposited the WIC check in the amount of \$67.97, into her bank account.

1.7 The Petitioner testified that she cannot speak English and it was unclear what Investigator Husted was asking her to do when he offered her the WIC check. Investigator Husted testified that he does not speak Spanish. Investigator Husted further testified that all of his transactions with the Petitioner were in English, and noted that the Petitioner speaks enough English to enable her to run the store and work with clients. Based on the totality of the evidence presented at the hearing, the Presiding Officer finds the testimony of Investigator Husted to be credible.

II. CONCLUSIONS OF LAW

2.1 The Department of Health has jurisdiction over the Petitioner's request for a fair hearing in this matter.

2.2 The Department of Health has established by a preponderance of the evidence that the Petitioner engaged in a "participant violation." A "participant violation" is defined, in part, as: "*exchanging* cash-value vouchers, food instruments or *supplemental foods for cash*, credit, non-food items or unauthorized food items." 7 CFR 246.2 (emphasis added). Exchanging a WIC check for cash is "trafficking," which means buying or selling WIC checks for cash. WAC 246-790-010(26). The trafficking of WIC checks is specifically prohibited. WAC 246-790-100(1)(a).

2.3 Because she engaged in the trafficking of a WIC check, the Petitioner's conduct requires sanctions. When a WIC retailer (here the Petitioner) engages in trafficking, the WIC regulations require the Petitioner's WIC license be disqualified for a period of time. 7 C.F.R. sec. 246.12(l)(1)(ii)(A), which provides in part:

Retail food delivery systems: Vendor Sanctions –

(1) Mandatory vendor sanctions – (ii) Six year disqualification. The State agency must disqualify a vendor for six years for: (A) One incidence of buying or selling food instruments for cash (trafficking);

See also WAC 246-790-100(7).

III. ORDER

Based upon the Findings of Fact and Conclusions of Law above, the Presiding Officer hereby ORDERS that the Petitioner's contract to act as a WIC retailer or vendor is DISQUALIFIED for a period of six years pursuant to 7 CFR sec. 12(l)(1)(ii)(A).

Dated this 7 day of April, 2011.

_____/s/_____
JOHN F. KUNTZ, Review Judge
Presiding Officer

CLERK'S SUMMARY

Charge	Action
7 CFR 246.12(l)(1)(ii)(A)	Violated

NOTICE TO PARTIES

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

WIC Program
P.O. Box 47886
Olympia, WA 98504-7886

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-11-580. The petition is denied if the Presiding Officer does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at <http://www.doh.wa.gov/hearings>