

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

In the Matter of:	)	Master Case No. M2010-895
	)	
IRINA TKACHEV,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Appellant.	)	AND FINAL ORDER
_____	)	

**APPEARANCES:**

Respondent, Irina Tkachev, 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 August 19, 2010, the Presiding Officer (on authority delegated by the Secretary of Health) conducted a fair hearing in this matter. The Appellant requested a fair hearing to contest the WIC Program's Revised Disqualification and Claim letter dated July 1, 2010.

**ISSUES**

- A. Did the Appellant's conduct violate 7 CFR sec. 246.23(c)(1)(i)?
- B. If the Presiding Officer finds that the Appellant's conduct violated 7 CFR sec. 246.23(c)(1)(i), does the Presiding Officer have the authority to waive the amount the Appellant owes to the WIC Program?

**SUMMARY OF THE PROCEEDING**

The Appellant testified and called Mikhail Tkachev to testify in her case in chief.

The WIC Program called Sylvia Burgholzer to testify in its case in chief.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND FINAL ORDER

The Presiding Officer admitted the following exhibit:

Exhibit 1: Washington State WIC Nutrition Program Rights and Responsibilities form dated July 23, 2009.

### **I. FINDINGS OF FACT**

By written stipulation dated August 9, 2010, the parties stipulate to the facts set forth in Paragraphs 1.1 through 1.6 below:

1.1 Appellant's daughter was certified into the WIC program on or about July 2009. Appellant's daughter was enrolled in the WIC program during the times related in paragraphs below. Appellant's daughter is currently still enrolled in the WIC program.

1.2 On July 23, 2009, Appellant signed a WIC Rights and Responsibility form agreeing to follow Program's rules and federal regulation. The form provided notice that the selling, trading, or gifting of WIC foods, formula, or WIC checks, among other activities, was prohibited. Appellant was given a copy of the signed form.

1.3 On or about April and May 2010, Appellant, through her husband, Mikhail Tkachev, made internet sales of 21 cans of infant formula that was provided to her through the WIC program. Mikhail Tkachev also served as the secondary endorser for Appellant's daughter's WIC checks.

1.4 During the subsequent WIC investigation, Appellant and her husband admitted to having sold the 21 cans of infant formula that was provided to them through the WIC program. But, they denied knowing that the selling of the infant formula was against WIC program rules and federal regulation.

1.5 After investigation and interview of Appellant and her husband, the Program sent Appellant a disqualification letter, dated July 1, 2010. The letter notified the Appellant that the Program was disqualifying her daughter from the WIC program for a one-year period pursuant to Program rules and federal regulation. The letter also included a claim for \$314.79, the cost of the 21 cans of formula the Appellant had sold.

1.6 The Appellant filed a timely appeal of the Program's letter. Appellant is specifically only appealing the requirement to pay the claim for reimbursement.

1.7 The Appellant has received WIC benefits over a six year period, both for her son and her daughter Alexandra. The Appellant has signed several Washington State WIC Nutrition Program Rights and Responsibilities forms (R & R form) during this six year period. See Exhibit 1. The R & R form the Appellant signed on July 23, 2009 states:

If I break the rules, make false statements, intentionally misrepresent, conceal, or withhold facts about my eligibility for the WIC Program, I understand that:

- I or my child can be taken off WIC for up to one year.
- I will have to pay money back to WIC for food or formula I should not have received.
- I can face civil or criminal prosecution under State and Federal law.

1.8 The Appellant is the mother of two children. The Appellant's husband (Mikhail Tkachev) is currently unemployed. For these reasons, the Appellant has limited financial ability to repay any overpayment. The Appellant is seeking a waiver of the \$314.79 overpayment requested in the WIC Program Revised Disqualification and

Claim letter date July 1, 2009, for that reason. The Appellant does not contest the disqualification.

## II. CONCLUSIONS OF LAW

2.1 The Department of Health has jurisdiction over the Applicant'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 Appellant violated 7 CFR sec. 246.23(c)(1)(i), which provides in part: "[i]f the State agency determines that program benefits have been obtained or disposed of improperly as a result of a participant violation, *the State agency must establish a claim against the participant for the full value of such benefits.*" 7 CFR 246.23(c)(1)(i) (emphasis added).

2.3 Under 7 CFR sec. 246.2, "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).

2.4 The Appellant claimed that she did not know that selling the 21 cans of infant formula was against the rules. The definition of "participant violation" does not rely on what Appellant and her husband intended to do, only on what conduct the Appellant and her husband engaged in. There is nothing in the language of 7CFR 246.23(c)(1)(i) or 7 CFR 246.2 that allows the Presiding Officer to waive the claim for the amount owed by the Appellant.

2.5 The appropriate sanction is reimbursement. The Appellant owns the Program \$314.79.

### III. ORDER

Based upon the Findings of Fact and Conclusions of Law above, the Presiding Officer hereby ORDERS the Appellant reimburse the sum of \$314.79 to the WIC Program of the Department of Health. The WIC Program should establish a reasonable payment plan in light of the Appellant's limited income and resources.

Dated this 9 day of September, 2010.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN F. KUNTZ, Review Judge  
Presiding Officer

### CLERK'S SUMMARY

Charge	Action
7 CFR 246.23(c)(1)(i)	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.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND FINAL ORDER

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>