STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT

In the Matter of:	)	Docket No. 08-02-C-2004WC
	)	
JESSIKA WEST,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Appellant.	)	AND FINAL ORDER
	)	

This matter came before Senior Health Law Judge Laura Farris, Presiding Officer for the Department of Health on delegated authority from the Secretary of Health. A hearing was held on a fair hearing request submitted by Jessika West (the Appellant) on March 11, 2008. The Program was represented by Oscar Chaves, Assistant Attorney General, and the Appellant represented herself. The hearing was held in Tumwater, Washington, and was reported by Sue Garcia, Court Reporter of Capitol Pacific Reporting. Based upon the record presented, the Presiding Officer issues the following.

SUMMARY OF THE PROCEEDING

The following Program exhibits were admitted at the prehearing conference:

Exhibit P-1: On-line advertisement;

Exhibit P-2: Washington State WIC Nutrition Program Rights and Responsibilities form, signed by Appellant, dated December 15, 2006;

Exhibit P-3: Washington State WIC Nutrition Program Rights and Responsibilities form, signed by Appellant, dated January 15, 2008;

Exhibit P-4: Client Group Information Summary and Check History for Appellant and her son; and

Exhibit P-5: Disqualification claim letter dated February 8, 2008.

Exhibit P-2 was withdrawn at the hearing by the Program. The Appellant did not submit any exhibits.

The following witnesses testified at the hearing for the Program: Tim Hustead, Investigator and Kathy Chapman, WIC Program Integrity Unit Manager. The Appellant called herself to testify at hearing.

ISSUES

The issues at the hearing were:

A. Whether Appellant's actions constituted a violation of 7 CFR 246.23[c][1][i], which provides in part: "if the state agency determines that program benefits have been obtained or disposed of improperly as the result of participant violation, the state agency must establish a claim against the participant for the full value of such benefits."

B. If the Appellant's actions constitute a violation of 7 CFR 246-23[c][1][i], what sanctions should apply?

I. FINDINGS OF FACT

1.1 The Appellant is a participant on her own behalf, and for her son, Colin West, in the Women, Infants and Children Supplemental Food Program (WIC Program), which is administered by the Department of Health.

1.2 All WIC clients are required to attend a WIC Program orientation, which includes an explanation of client rights and responsibilities. Clients are required to sign a "Rights and Responsibilities" form prior to obtaining any WIC food. The Appellant signed her most recent "Rights and Responsibilities" form on January 18, 2008.[1] By signing the form, the Appellant agreed to follow WIC rules, which includes a

[1] The Appellant signed her first form in December 2006. See Exhibit P-2.

requirement that the Appellant "[d]o not sell, trade or give away WIC foods, formula or WIC checks." Exhibit 3 (page 2).

1.3 Among others, on October 18, 2007, at 11:07 a.m., the WIC Program issued nine checks to the Appellant, as follows:

Check No.	Maximum amount	Date & Time Used
1058681571	$9.84	1/3/08 at 11:30am.
1058681572	$77.25	1/3/08 at 11:30am
1058681573	$61.80	1/3/08 at 11:30am
1058681577	$10.06	1/3/08 at 11:30am
1058681578	$64.95	1/3/08 at 11:30am
1058681579	$51.96	1/3/08 at 11:30am
1058681574	$12.23	1/3/08 at 11:30am
1058681575	$67.45	1/3/08 at 11:30am
1058681576	$53.96	1/3/08 at 11:30am
Total	$409.50	

Exhibit D-4.

1.4 The Appellant ran the following ad on Craigslist (the internet): "Hello. I have 11 unopened cans of similac advance formula and 4 unopened boxes of infant rice cereal (3 Earth's Best organic and 1 Gerber) $100 takes all. Please email or call if interested. Thanks Jessica 756-8511." This email was posted on January 3, 2008.

1.5 Tim Hustead, a WIC program investigator, saw the ad. He verified it was the Appellant's. On January 9, 2008, Mr. Hustead contacted the Appellant, and she admitted to Mr. Hustead at that time that she sold the 11 cans of formula. The

Appellant admitted to seeing the form that such sale is a violation of the rules. On February 13, 2008, the Appellant also admitted to WIC Program Integrity Unit Manager Kathy Chapman that she sold 11 cans of Simulac Advance formula for 60$.[2]

1.6 At the hearing, the Appellant argued that the Program cannot prove that all 11 cans of formula were purchased with WIC monies. The Presiding Officer finds that the prior admissions to Mr. Hustead and Ms. Chapman are sufficient proof for the Program to meet its burden. The Appellant testified at the hearing that, after thinking about and talking to her husband, she remembered that she commingled the family's formula and the WIC formula during the family's move. Given the prior inconsistent statements, the Presiding Officer does not find Appellant's testimony to be credible. Appellant sold 11 cans of WIC formula on the internet.

1.7 A single can of Simulac Advance Formula costs $12.99. Eleven cans of Simulac Advance Formula total $142.89.

II. CONCLUSIONS OF LAW

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

2.2 The Program has established, by a preponderance of the evidence, that the Appellant violated 7 CFR 246.23[c][1][i], which provides in part: "if the state agency determines that program benefits have been obtained or disposed of improperly as the

[2] This sale did not include the cereal.

result of participant violation, the state agency must establish a claim against the participant for the full value of such benefits."

2.3 The appropriate sanction is reimbursement. The Appellant owes the Program $142.89.[3]

III. ORDER

Based upon the Findings of Fact and Conclusions of Law above, the Presiding Officer hereby ORDERS the Appellant to reimburse the sum of $142.89 to the WIC Program of the Department of Health. The Program should establish a reasonable payment plan in light of the Appellant's limited income and resources.

Dated this _1__ day of April, 2008.

/s/
LAURA FARRIS, Senior Health Law Judge
Presiding Officer

[3] The Program is correct that it is not required to accept in kind services. 7 CFR 246.23 c(ii) reads:

(ii) Types of restitution. In lieu of financial restitution, the State agency **may** allow participants or parents or caretakers of infant or child participants for whom financial restitution would cause undue hardship to provide restitution by performing in-kind services determined by the State agency. Restitution may not include offsetting the claim against future program benefits, even if agreed to by the participant or the parent or caretaker of an infant or child participant. (Emphasis added)
This language is permissive.

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); RCW 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, Washington 98504-7879

and a copy must be sent to:

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

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on 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, however, the 30-day period will begin to run upon the resolution of that petition.

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