

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF PROFESSIONAL STANDARDS

In the Matter of WIC Benefits)
of:) OPS No. 95-05-02-805 WIC
)
) FINDINGS OF FACT,
on behalf of her child,) CONCLUSIONS OF LAW,
) AND FINAL ORDER
Respondent.)
_____)

A hearing was held before Health Law Judge _____, Presiding Officer, on May 22, 1995, at the Selah Civic Center, 216 South 1st Street, Selah, Washington. (Respondent) was present, representing herself. Representing the Department of Health, Office of WIC Services (WIC Program), was _____ Program Manager. The hearing was recorded by _____ of Affiliated Court Reporters, Yakima, Washington. _____ court certified interpreter, translated the hearing for _____ Based upon the testimony and documents presented at the hearing, the Health Law Judge issues the following:

I. PROCEDURAL FINDINGS

1.1 On March 7, 1995, _____ was sent a letter notifying her of her ineligibility with the WIC Program and her obligation to reimburse the WIC Program \$699.20. The letter was translated by _____

1.2 On May 2, 1995, the Office of Professional Standards received from _____ a Fair Hearing Request.

1.3 On May 11, 1995, the Office of Professional Standards served a Notice of Hearing on [redacted]. The notice informed [redacted] that she could bring an attorney or other person to help her. The hearing was scheduled for May 22, 1995, at the Selah Civic Center.

1.4 On May 22, 1995, the Presiding Officer conducted a hearing on the above referenced matter. [redacted] testified on her own behalf. [redacted] (Program Manager, Office of WIC Services, Department of Health), [redacted] (Coordinator, Yakima Neighborhood Health Services), [redacted] (Health Educator, Yakima Neighborhood Health Services) and [redacted] (Certifier, Yakima Neighborhood Health Services) testified for the WIC Program. The following documents were presented by [redacted] and were admitted:

Exhibit No. 1: Federal Register, Department of Agriculture, Food and Nutrition Service, Consolidation of WIC Program Regulations, September 1990, pages 1-74 (cover page and seventy-four pages double-sided).

Exhibit No. 2: Excerpts from WAC 246-790 and 7 CFR Part 246 (eight pages).

Exhibit No. 3: Excerpts from Washington State WIC Manual (Policies and Procedures), Vol. 1, January 1994, Chapters 2, 3, and 7 (seven pages double-sided).

Exhibit No. 4: Medical Identification Card, Department of Social and Health Services (one page); Washington State WIC Program Child Certification Form, dated June 23, 1993 (one page double-sided).

Exhibit No. 5: WIC Potential Abuse Form, dated 12-6-94 (one page double-sided).

Exhibit No. 6: Summary of benefits paid for [redacted] by WIC Program (one page).

Exhibit No. 7: Letter to [redacted] from [redacted] dated March 7, 1995, with attached invoice vouchers (five pages); Translation of Enclosed Letter dated March 7, 1995, signed by [redacted] (one page) and letter to [redacted] from [redacted] dated March 7, 1995 (Spanish, two pages).

Exhibit No. 8: WIC Signature Form for _____ dated May 26, 1994 (Spanish, one page); Washington State WIC Program Child Certification Form, dated May 26, 1994 (one page); Washington State WIC Program Child Certification Form, dated November 16, 1993 (one page double-sided); WIC Signature Form (English, blank form, one page and copy).

II. FINDINGS OF FACT

2.1 _____ child, _____ was a participant in the Women Infants and Children Supplemental Food Program (WIC) which is administered by the Department of Health through the Yakima Neighborhood Health Services (Clinic).

_____ can speak Spanish, but cannot read or write Spanish. She is unable to speak, read, or write English.

2.2 The WIC program was established by the Child Nutrition Act of 1966, now codified with subsequent amendments as 42 U.S.C. §1786 et seq. The Food and Nutrition Service within the United States Department of Agriculture administers the program and provides funds to the Washington State Department of Health WIC Program for distribution of WIC benefits in accord with federal rules. The benefits are distributed through local agencies. Using federal criteria for nutritional risk, local agencies conduct a certification interview and certify eligible individuals as being at nutritional risk for six-month periods and approve those certified individuals for participation in the WIC Program if funds permit. At the end of each period, the individuals may be recertified if they continue to meet the federal criteria and if sufficient funds are available. In Washington, the benefits are provided to individuals by providing checks which may be used during a one-month period. Participants have

monthly appointments at the WIC clinic during which they pick up the checks for the next month.

2.3 The Clinic provides a Spanish certifier to conduct the certification interview. At each interview, the information is verified about the child. On June 23, 1993, I took to the Clinic and informed the Clinic certifier that her son's birthday was certified as a participant in the WIC program. Exhibit No. 4. received benefits for her son for the following six months. On November 16, 1993 and May 26, 1994, six-month certification interviews occurred. Each time continued to state that birthday was Exhibit No. 8.

2.4 The WIC Signature Form is read by the certifier in Spanish. The WIC Certification Form includes, among other statements, the following:

I have been given a copy and understand my rights and responsibilities on WIC. I will give information to WIC that is true and correct to the best of my knowledge. ... I understand that I must not lie or hide facts to get WIC benefits. For any of these acts, I may have to pay the State agency for the food I was given. I may also be prosecuted under the State and Federal law. Exhibit No. 8.

provided the information about her son and was informed in Spanish about her rights and responsibilities during each six-month certification. signed the WIC Signature Form by making her mark at each six-month certification interview.

2.5 : received checks three times a month from June of 1993 to October of 1994, for the purchase of food items for her son The total amount she received in checks for this period was \$699.20. Exhibit No. 7.

2.6 A Medical Identification Card from the Department of Social and Health Services (Medical Card) was obtained by the Clinic. The Medical Card stated that birthday was . Exhibit No. 4.

2.7 About the time of the fourth six-month certification interview, , a clinic certifier, met with . Ms. , however, asked Ms. about the medical coupon and whether birthday was January 8, 1988. Ms. informed Ms. that she could not remember her son's birthday. Ms. informed Ms. that she must report this discrepancy to her supervisor. Ms. asked Ms. not to report the information from the Medical Card.

2.8 During the hearing, Ms. at first stated that she did not have a birth certificate and could not remember her son's birthday. Later in the hearing when asked about birthday on the Medical Card, Ms. stated that she believed the birthday was correct. Ms. maintained that the clinic knew that her son was too old for the WIC Program, but provided the WIC benefits anyway.

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III. CONCLUSIONS OF LAW

3.1 The Department of Health has jurisdiction over the participation of in the WIC Program and over request for a fair hearing in this matter.

3.2 The purpose of the WIC Program is to serve as an adjunct to health care by providing nutritious food, nutrition education, health screening and referral services to pregnant and breast-feeding women, infants, and children in certain high-risk categories. WAC 246-790-050(1). The WIC Program has incorporated by reference into its administrative rules the federal regulations governing the WIC Program (7 CFR Part 246). WAC 246-790-050(2).

3.3 To be eligible for WIC Program benefits children must be under the age of five. "Children" means persons who have had their first birthday but have not yet attained their fifth birthday. 7 CFR Section 246.2 Definitions, See Also, CFR Section 246.7(b). Children shall be certified at intervals of six-months, finishing with the end of the month in which each child reaches their fifth birthday. 7 CFR Section 246.7(f)(1)(v). On June 23, 1993, at the beginning of his first certification period, was over the age of five and was not eligible for benefits under the WIC Program.

3.4 Under 7 CFR 246.7(h) and (i), the parents or caretakers of WIC Program participants are to be advised of their rights and responsibilities under the Program. The WIC Signature Form was read to in Spanish and she made her mark (her signature), on the WIC Signature Form during each certification interview. Ms. was repeatedly told during the certification process that she must not lie or hide facts in order to receive benefits under the WIC Program.

3.5 At the initial certification interview on June 23, 1993, informed the certifier that birthday was and he was years old, while in fact his birthday was received benefits and continued to assert at the next two six-month certification

interviews that her son's birthday was [redacted]. After completing three certification interviews and signing the WIC Signature Form that she was not lying or hiding facts to obtain WIC benefits, the WIC Program had noticed that on his Medical Card, [redacted] birthday was [redacted]. When asked about this information on the Medical Card, [redacted] asserted that she could not remember her son's birthday and did not have any certificate to verify his birthday. When [redacted] stated that she must report this discrepancy to her supervisor, [redacted] asked [redacted] not to disclose [redacted] birthday. The Presiding Officer is empathetic with [redacted] and her attempt to seek nutritional benefits for her child. Nevertheless, the evidence shows that Ms. [redacted] was providing false information about her son's age each time she was applying for benefits during the certification interviews. An order should be entered affirming the WIC Program's decision that [redacted] must reimburse the WIC Program \$699.20.

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IV. FINAL ORDER

Based upon the Procedural Findings, Findings of Fact, and Conclusions of Law above, the Presiding Officer now issues the following FINAL ORDER:

4.1 The WIC Program's decision requiring [redacted], the Respondent, to pay \$699.20 (six hundred ninety-nine dollars and twenty cents) to the WIC Program is AFFIRMED. The WIC Program shall again extend its offer of a monthly payment schedule and/or payment plan to [redacted].

THE PARTIES ARE FURTHER ADVISED, pursuant to RCW 34.05.461 and .470, that within ten (10) days of service of this Order you may file a petition for reconsideration with the Office of Professional Standards, Department of Health, P.O. Box 47872, Olympia, Washington 98504-7872. The petition shall state the specific grounds upon which relief is requested. The petition for reconsideration shall not stay the effectiveness of this Final Order. The petition is deemed to have been denied if, within twenty (20) days of the date of its filing, the Department has not disposed of your petition or has not served you with written notice specifying the date by which action will be taken on your petition.

"Filing" means actual receipt of the document by the Office of Professional Standards. 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(18).

Proceedings for judicial review may be instituted by filing a petition in the Superior Court in accord with the procedures specified in Title 34 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review must be filed within thirty (30) days after you have been served with this Final Order, as provided by RCW 34.05.542.

DATED THIS 5th DAY OF JUNE, 1995.

/s/ by _____, Health Law Judge
Presiding Officer

DECLARATION OF SERVICE BY MAIL

I declare that today I served a copy of this document upon the following parties of record:
by mailing a copy properly addressed with postage prepaid.

DATED AT OLYMPIA WASHINGTON THIS _____ DAY OF JUNE, 1995.

Office of Professional Standards

cc: