

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No: 2013-63503 WIC

████████████████████
Appellant
_____ /

FINAL DECISION

This matter is before the Michigan Administrative Hearing System on an appeal filed by Appellant, ██████████, from a Notice of Determination for Disqualification / Sanction from the WIC Program dated ██████████ and a Notice of Redetermination for Disqualification / Sanction after an Informal Compliance Conference dated ██████████. Appellant's request for hearing was received by the Michigan Administrative Hearing System on ██████████.

The matter was set for hearing pursuant to 7 CFR 246.9, 7 CFR 246.25, and MI-WIC Policy 1.04, 2.18, and 2.20. A hearing scheduled for ██████████ was adjourned per the Appellant's request and an in-person hearing was held on ██████████ at ██████████. Appellant appeared and testified on her own behalf.

██████████, Administrative Law Specialist, represented the Respondent, Department of Community Health (Department). ██████████, Assistant Corporate Counsel, ██████████ also appeared. ██████████, WIC Program Supervisor, ██████████ Health Department, appeared as a witness for the Department. ██████████, Training, Evaluation and Compliance Manager, WIC Supplemental Food Program; ██████████, Compliance Lead, WIC Program; ██████████, Fair Hearing Lead, WIC Program; ██████████, Community Clinical Services Clinical Director; and ██████████, Policy Coordinator, WIC Program; also appeared for the Department.

EXHIBITS

Appellant's Exhibits:

- A. Email dated ██████████
- B. Copies of checks, bank statements
- C. Email dated ██████████
- D. Defendant's Response to Interrogatories and Production of Documents
- E. Personal Protection Order
- F. Opinion and Order

Respondent's Exhibits:

1. Request for Hearing by Client
2. MI-WIC Client Records
3. Notice of Determination for Disqualification / Sanction after Investigation of Complaint
4. Notice of Redetermination for Disqualification / Sanction after Informal Compliance Conference
5. Income Tax Returns [REDACTED] for [REDACTED] and [REDACTED]
6. Orders for Case No. [REDACTED]-DM for [REDACTED] Regarding Custody, Parenting Time, and Support After [REDACTED] Hearing
7. MI-WIC Policy and Federal Program Regulations
8. WIC Family Transaction Information

ISSUE

Did the Department properly suspend Appellant from the WIC program for 1 year and order Appellant to repay \$ [REDACTED] in WIC benefits she received during a period of ineligibility?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant enrolled in the WIC program through the [REDACTED] Health Department on or about [REDACTED]. (Exhibit 2, p 1).
2. During her participation in the WIC program, Appellant signed WIC Client Agreements at least bi-annually, in which she certified that she understood the WIC program rules and guidelines. Appellant also certified by signing the agreements that she would report to the WIC office any change in address, phone number, income, or family composition. (Exhibit 2, pp 5-12)
3. During the period relevant to this case, Appellant's household consisted of three members: Appellant, her husband, her unborn child, and then her child once born. However, Appellant only reported herself and her child to the WIC Program upon application. (Exhibit 2, p 1; Exhibit 5; Testimony)
4. During the period relevant to this case, Appellant reported her own personal income to the WIC Program, but not her husband's income. When Appellant applied for the WIC Program on [REDACTED], Appellant reported household annual income of \$ [REDACTED]. When Appellant was recertified for the WIC Program

on [REDACTED], she reported annual household income of \$ [REDACTED]. When Appellant next recertified for the WIC Program on [REDACTED], she reported household income of \$ [REDACTED]. At Appellant's next recertification on [REDACTED], she reported household income of \$ [REDACTED]. When Appellant recertified on [REDACTED], she reported household income of \$ [REDACTED]. (Exhibit 2, p 18; Exhibit 5)

5. On or about [REDACTED], the [REDACTED] Health Department WIC Program received a telephone complaint from Appellant's former spouse, [REDACTED]. [REDACTED] reported that Appellant had been receiving WIC benefits while they were married and he believed that Appellant was not eligible for WIC benefits based on the family's income. (Exhibit 2, p 13; Testimony)
6. Following the Complaint, the Department conducted an investigation, which was completed on [REDACTED]. The Department determined that the Appellant was guilty of intentionally making false statements or intentionally misrepresenting, concealing, or withholding facts to obtain WIC benefits. (Exhibit 2, p 15; Testimony)
7. Appellant and her husband filed joint tax returns in [REDACTED], [REDACTED], and [REDACTED]. Gross income for Appellant's household in [REDACTED] was \$ [REDACTED]. Gross income for Appellant's household in [REDACTED] was \$ [REDACTED]. Gross income for Appellant's household in [REDACTED] 1 was \$ [REDACTED]. (Exhibit 5)
8. For [REDACTED] and [REDACTED], the maximum income a household consisting of 3 persons could have and still be eligible for the WIC Program was \$ [REDACTED]. (Exhibit 7, p 1). For [REDACTED], the maximum income a household consisting of 3 persons could have and still be eligible for the WIC Program was \$ [REDACTED]. (Exhibit 7, p 2) For [REDACTED], the maximum income a household consisting of 3 persons could have and still be eligible for the WIC Program was \$ [REDACTED]. (Exhibit 7, p 3)
9. On [REDACTED], the Department sent Appellant a Notice of Determination for Disqualification / Sanction after Investigation of Complaint. The Notice informed Appellant of her right to an informal conference and a fair hearing. (Exhibit 3)
10. On [REDACTED] an informal conference was held between Appellant and the Department at which time Appellant presented information regarding her case. The Department determined that Appellant was aware that she was over the income limit when she enrolled in WIC. A determination was made that Appellant was to repay the amount of WIC benefits paid to her during the period of ineligibility. (Exhibit 2, p 17; Testimony)
11. On [REDACTED], the Department sent Appellant a Notice of Redetermination for Disqualification / Sanction after Informal Compliance Conference. The notice informed Appellant of her right to a fair hearing. (Exhibit 4)
12. Appellant's Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Exhibit A)

CONCLUSIONS OF LAW

The WIC Program is funded by the U.S. Department of Agriculture and is operated in Michigan by the Michigan Department of Community Health under federal regulations. The WIC Program is designed to provide supplemental foods to pregnant women, lactating women, and infants and children to prevent nutritional deficiencies. Federal regulations and the Michigan Department of Community Health State Plan set out the basis for application and qualification for the WIC program.

Violations of the WIC Program are defined in 7 CFR 246.2, which provides, in relevant part:

Participant violation means any intentional action of a participant, parent or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; exchanging cash-value vouchers, food instruments or supplemental foods for cash, credit, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer or vendor staff; and dual participation. Emphasis added.

Certification of participants for the WIC Program is covered by 7 CFR 246.7, which provides, in relevant part:

* * * *

(c) *Eligibility criteria and basic certification procedures.* (1) To qualify for the Program, infants, children, and pregnant, postpartum, and breastfeeding women must:

(i) Reside within the jurisdiction of the State (except for Indian State agencies). Indian State agencies may establish a similar requirement. All State agencies may determine a service area for any local agency, and may require that an applicant reside within the service area. However, the State agency may not use length of residency as an eligibility requirement.

(ii) Meet the income criteria specified in paragraph (d) of this section.

(iii) Meet the nutritional risk criteria specified in paragraph (e) of this section.

* * * *

(d) *Income criteria and income eligibility determinations.* The State agency shall establish, and provide local agencies with, income guidelines, definitions, and procedures to be used in determining an applicant's income eligibility for the Program.

* * * *

(j) *Notification of participant rights and responsibilities.* In order to inform applicants and participants or their parents or caretakers of Program rights and responsibilities, the following information shall be provided. Where a significant number or proportion of the population eligible to be served needs the information in a language other than English, reasonable steps shall be taken to provide the information in appropriate languages to such persons, considering the scope of the Program and the size and concentration of such population.

* * * *

(5) Persons found ineligible for the Program during a certification visit shall be advised in writing of the ineligibility, of the reasons for the ineligibility, and of the right to a fair hearing. The reasons for ineligibility shall be properly documented and shall be retained on file at the local agency.

(6) A person who is about to be suspended or disqualified from program participation at any time during the certification period shall be advised in writing not less than 15 days before the suspension or disqualification. Such notification shall include the reasons for this action, and the participant's right to a fair hearing. Further, such notification need not be provided to persons who will be disqualified for not picking up cash-value vouchers, supplemental foods or food instruments in accordance with paragraph (h)(3)(i) of this section.

(7) When a State or local agency pursues collection of a claim pursuant to § 246.23(c) against an individual who has been improperly issued benefits, the person shall be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits which must be repaid, and of the right to a fair hearing.

(8) Each participant, parent or caretaker shall be notified not less than 15 days before the expiration of each certification period that certification for the Program is about to expire.

* * * *

If a claim is made against a participant in the WIC Program for claiming improper benefits, the participant has the right to be notified of his or her appeal rights pursuant to 7 CFR 246.9 which provides, in relevant part:

* * * *

(c) *Notification of appeal rights.* At the time of a claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the Program, the State or local agency shall inform each individual in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

(d) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing.

(e) *Time limit for request.* The State or local agency shall provide individuals a reasonable period of time to request fair hearings; provided that, such time limit is not less than 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action.

* * * *

(g) *Continuation of benefits.* Participants who appeal the termination of benefits within the 15 days advance adverse action notice period provided by § 246.7(j)(6) must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible for benefits.

Sanctions for violations of WIC Program policies are provided for in 7 CFR 246.12(u), which provides:

(u) *Participant violations and sanctions — (1) General requirements.* The State agency must establish procedures designed to control participant violations. The State agency also must establish sanctions for participant violations. Participant sanctions may include disqualification from the Program for a period of up to one year.

(2) *Mandatory disqualification.* (i) *General.* Except as provided in paragraphs (u)(2)(ii) and (u)(2)(iii) of this section, whenever the State agency assesses a claim of \$100 or more, assesses a claim for dual participation, or assess a second or subsequent claim of any amount, the State agency must disqualify the participant for one year.

(ii) *Exceptions to mandatory disqualification.* The State agency may decide not to impose a mandatory disqualification if, within 30 days of receipt of the letter demanding repayment, full restitution is made or a repayment schedule is agreed on, or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.

(iii) *Terminating a mandatory disqualification.* The State agency may permit a participant to reapply for the Program before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.

(3) *Warnings before sanctions.* The State agency may provide warnings before imposing participant sanctions.

(4) *Fair hearings.* At the time the State agency notifies a participant of a disqualification, the State agency must advise the participant of the procedures to follow to obtain a fair hearing pursuant to § 246.9.

(5) *Referral to law enforcement authorities.* When appropriate, the State agency must refer vendors, home food delivery contractors, and participants who violate program requirements to Federal, State, or local authorities for prosecution under applicable statutes.

Policy for the Michigan WIC Program is found in the MI-WIC Policy manual. With regard to violations and sanctions, the manual provides, in Section 9.01B Violation Types/Sanctions, the following:

Client Violation – per Federal Regulations	Client Violation	Sanction Action
“Intentionally making false or misleading statements or intentionally misrepresenting, concealing or withholding facts to obtain benefits”	Failure to notify staff of change in eligibility Misrepresentation of eligibility False reporting of lost EBT card or benefits Use of another person’s EBT benefits, with or without permission, except as an authorized proxy	1 st Offense: No claim or claim amount <\$100.00 – 6 month disqualification Claim amount ≥ \$100.00 – 1 year disqualification

The WIC Coordinator testified that Appellant enrolled in the WIC program through the ██████████ Health Department on or about ██████████. The WIC Coordinator indicated that during her participation in the WIC program, Appellant signed WIC Client Agreements at least bi-annually, in which she certified that she understood the WIC program rules and guidelines. Appellant also certified by signing the agreements that she would report to the WIC office any change in address, phone number, income, or family composition. The WIC Coordinator testified that during the period relevant to this case, Appellant’s household consisted of three members: Appellant, her husband, her unborn child and then her child once born. However, the WIC Coordinator testified that Appellant only reported herself and her child to the WIC Program upon application. The WIC Coordinator testified that on or about ██████████, he received a telephone complaint from Appellant’s former spouse, who reported that Appellant had been receiving WIC benefits while they were married and he believed that Appellant was not eligible for WIC benefits based on her income.

The WIC Coordinator testified that following the Complaint, he conducted an investigation, which was completed on ██████████. The WIC Coordinator reviewed Appellant’s case record with

the WIC Program and Appellant's household joint tax returns for [REDACTED], [REDACTED], and [REDACTED]. The WIC Coordinator found that gross income for Appellant's household was \$ [REDACTED] in [REDACTED], \$ [REDACTED] in [REDACTED] and \$ [REDACTED] in [REDACTED]. Comparing these amounts to the amounts Appellant actually reported to the WIC Program, the WIC Coordinator discovered that Appellant substantially underreported her household income. For example, the WIC Coordinator testified that when Appellant applied for the WIC Program on [REDACTED], Appellant reported her household annual income as only \$ [REDACTED]. When Appellant was recertified for the WIC Program on [REDACTED], she reported annual household income of only \$ [REDACTED]. When Appellant next recertified for the WIC Program on [REDACTED], she reported her household income as only \$ [REDACTED]. At Appellant's next recertification on [REDACTED], she reported household income of only \$ [REDACTED]. When Appellant recertified on [REDACTED], she reported household income of only \$ [REDACTED]. The WIC Coordinator determined that the Appellant was guilty of intentionally making false statements or intentionally misrepresenting, concealing, or withholding facts to obtain WIC benefits because for [REDACTED] and [REDACTED], the maximum income a household consisting of 3 persons could have and still be eligible for the WIC Program was \$ [REDACTED]. For [REDACTED], the maximum income a household consisting of 3 persons could have and still be eligible for the WIC Program was \$ [REDACTED]. And, for [REDACTED], the maximum income a household consisting of 3 persons could have and still be eligible for the WIC Program was \$ [REDACTED].

The WIC Coordinator testified that on [REDACTED], he sent Appellant a Notice of Determination for Disqualification / Sanction after Investigation of Complaint. The Notice informed Appellant of her right to an informal compliance conference and a fair hearing. When Appellant requested an informal compliance conference, the WIC Coordinator met with client on [REDACTED]. Appellant presented information regarding her case, but the WIC Coordinator determined that Appellant was aware that she was over the income limit when she enrolled in WIC. The WIC Coordinator determined that, according to WIC Policy, Appellant would be suspended from the WIC Program for 1 year and ordered to repay the amount of WIC benefits paid to her during the period of ineligibility. The WIC Coordinator testified that he offered to set up a payment plan to allow Appellant to pay the money back, with a payment as low as \$ [REDACTED] per month. The WIC Coordinator also testified that he informed Appellant that her children could still be covered under the WIC Program through a proxy, Appellant's sister.

Appellant testified that she only applied for WIC because she needed the formula and food for her child. Appellant indicated that she moved to the United State in [REDACTED] from the Dominican Republic and got married in [REDACTED]. Appellant testified that she had marital problems right away because her husband was very controlling. Appellant testified that she became pregnant in [REDACTED] and that her pregnancy was very difficult because of the stress of living with her husband. Appellant indicated that she was verbally abused and economically deprived by her husband. Appellant testified that her husband would match whatever she made and put the money in the joint checking account, but that she never knew how much more he made than her. Appellant testified that the family's bills were always more than their income and that they were always behind in paying bills. Appellant testified that her husband knew she was in the WIC Program and never had a problem with it until they separated. (Exhibit A, C, D) Appellant indicated that she separated from her husband in [REDACTED], but could not afford to move out until [REDACTED]. Appellant's divorce was not finalized until [REDACTED], at which time Appellant was awarded primary legal and physical custody of the couple's daughter. (Exhibit F)

Appellant testified that she understood what “household” income meant with regard to the WIC Program but that because she did not have access to all of her husband’s income, she did not feel that she needed to report it. However, Appellant also testified that she never reported the \$ [REDACTED] her husband contributed to the joint checking account each month to WIC either. Appellant indicated that she was present when the parties had their income taxes prepared in [REDACTED], [REDACTED], and [REDACTED]. Appellant testified that she believed her husband should also be responsible for any money owed to WIC.

Based on the evidence presented, the Appellant has failed to prove, by a preponderance of the evidence, that the action taken by the Department was improper. Appellant knew that she was not reporting her true household income to the WIC Program. If Appellant had reported her true household income, she would not have been eligible for the WIC Program. While the tribunal can sympathize with Appellant’s position, Appellant clearly withheld information from the WIC Program regarding her household income, which resulted in her receiving benefits for which she and her family were not eligible. Appellant’s claim that her husband should also be held responsible for repaying the benefits because he knew about the situation is without merit. Appellant’s husband never applied for WIC benefits and never signed WIC Client Agreements certifying that he was reporting true and accurate information to the WIC Program. Likewise, Appellant’s claim that she did not know her true household income because her husband withheld that information from her is without merit. Appellant was present when the couple had their taxes returned each year and Appellant clearly knew that her husband earned more than her. It was also Appellant’s duty to ensure that the information she provided to the WIC Program was true, accurate, and complete. Appellant also calls into question her ex-husband’s motive in filing the complaint against her with WIC, but his motive for filing the complaint is irrelevant to this case. The Department’s decision to suspend Appellant from the WIC Program for 1 year, and the Department’s decision that Appellant must repay the improper benefits she received must be affirmed on the evidence in this record.

[REDACTED]
Docket No. 2013-63503 WIC
Decision & Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly disqualified Appellant from the WIC Program for a period of 1 year. The Department also properly determined that Appellant must repay to the WIC Program improper benefits she received in the amount of \$ [REDACTED].

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc: [REDACTED]

Date Signed: 9/20/2013

Date Mailed: 9/20/2013