

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	
K L)	OAH No. 17-0525-WIC
<hr style="width:45%; margin-left:0"/>)	Agency No.

DECISION

I. Introduction

Ms. K L received Similac through the Alaska Women, Infants, and Children Special Supplemental Nutrition Program (WIC). She advertised Similac for sale on her Facebook page. The Division of Public Assistance (Division) became aware of the sale listing and determined that she was selling Similac that she obtained through the WIC program. It notified her that this sale was a violation of the WIC program rules, required her to repay the cost of the Similac and disqualified her from the WIC program for one year. Ms. L requested a hearing to challenge the Division’s action.

The evidence shows that Ms. K L listed Similac that she acquired through the WIC program for sale on Facebook. Selling WIC program items is a violation of the WIC program rules. The Division’s determination that Ms. K L is therefore disqualified from receiving WIC program benefits for one year, and is required to reimburse the WIC program for the cost of the Similac, \$115.44, is AFFIRMED.

II. Facts

Ms. K L receives food packages from the WIC program. Her food package that was sent to her towards the end of February 2017 contained seven cans of Similac powder.¹ She was receiving the food packages because she has a young son. Ms. K L advertised six cans of Similac for sale on Facebook on April 24, 2017. The ad read “[s]elling six cans of similac for \$60. Don’t need anymore. Anyone interested pm asap before 3.00.”² Sandra Harbanuk, who supervises vendor management for the WIC program, received an email notifying her of the Facebook listing on April 24, 2017.³ The WIC program then sent Ms. K L notice that she had violated WIC program rules, and that the consequence was her disqualification from the WIC program for one year, along with a requirement that she repay the WIC program the cost of the Similac, \$115.44. That same correspondence informed Ms. K L that she had the option of paying the claim, or

¹ Ex. 12.
² Ex. 3.
³ Ms. Harbanuk’s testimony.

entering in a repayment agreement, within 30 days of that correspondence, to avoid disqualification.⁴

As part of her participation in the WIC program, Ms. K L signed a “Rights and Responsibilities” form on May 24, 2016. That form reads, in pertinent part, “I will not sell, trade or give away formula or other WIC benefits.”⁵

Ms. K L requested a hearing to challenge the disqualification and the repayment requirement. Her hearing request reads:

The Similac cans I posted were for my relative on facebook since she doesn't have internet to do it herself. I still use Similac cans for my son since it helps more than can milk. And I am sorry for the misunderstanding.⁶

Ms. K L testified as follows:

- She still feeds her son Similac.
- The Similac that she posted for sale on Facebook was not the Similac she obtained through the WIC program, but was instead her sister's Similac.
- Her sister does not have internet access and asked Ms. K L to sell the Similac because she breastfeeds her infant, and needed the money.
- Ms. K L lives in Village A.

L L is Ms. K L's sister. She testified as follows:

- She lives in Village B.
- She also receives WIC assistance.
- She was not selling Similac obtained through the WIC program, but was selling Similac that she acquired from the No Name store in Town C. She obtained the Similac through the WIC program after her purchase of the Similac in Town C.
- She left Similac, apparently with a cousin in Town C, because she did not have room in her baggage. She might have asked her cousin to give it away.
- She didn't mean to get her sister in trouble.

Ms. L L's testimony was confusing, difficult to follow, and did not make any coherent sense. It was not credible. For instance, the extra Similac was apparently in Town C. She lives in Village B, not Town C. Ms. K L lives in Village A, not Town C, not Village B. Ms. K L's testimony on the source of the Similac listed for sale on Facebook similarly is not credible. It

⁴ Exs. 4, 5.

⁵ Ex. 6.

⁶ Ex. 1.

would not make sense for Ms. K L to sell Similac for Ms. L L, when they do not live in the same village, and neither of them live in Town C where the extra Similac was apparently located.

The lack of credibility from both Ms. K L and Ms. L L leads to the factual finding that it is more likely true than not true than Ms. K L advertised Similac, which she obtained from the WIC program, for sale on Facebook.

III. Discussion

The WIC program is a federal program, administered by the states, which provides supplemental nutrition assistance to pregnant women, breastfeeding women, and parents with infants.⁷ It has several requirements. The requirement pertinent to this case is that WIC recipients are not allowed to sell the food they obtain through the WIC program.⁸ As discussed above, the Division has shown that Ms. K L attempted to sell food, specifically Similac, which she obtained from the WIC program. It must be noted that Ms. K L was advised of the prohibition against selling WIC foods, which she acknowledged in writing.

The WIC program has a mandatory one-year disqualification provision when it has a claim for more than \$100.⁹ The claim in this case was for \$115.44. If, within 30 days of being notified of a claim, a participant either pays the claim in full or sets up a repayment agreement, the WIC program has the discretion to not pursue mandatory disqualification.¹⁰ In this case, Ms. K L chose to not pay the claim, and instead challenged the disqualification on factual grounds. Accordingly, a one-year disqualification period and a requirement that she repay the \$115.44 is fully supported by the applicable federal regulations.

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⁷ 7 CFR § 246.1.
⁸ See 7 CFR § 246.2 for a list of program violations.
⁹ 7 CFR § 246.12(u)(i).
¹⁰ 7 CFR § 246.12(u)(ii).

IV. Conclusion

Ms. K L intentionally listed Similac, which she obtained from the WIC program, for sale. This was a violation of the WIC program. She is disqualified from the WIC program for a one-year period beginning August 1, 2017. She is also required to repay the WIC program \$115.44 for the cost of the Similac. Ms. K L may, if she either pays the WIC program the \$115.44, or enters into a repayment agreement, before the end of that one-year period, request that the WIC program terminate the disqualification period early.¹¹

DATED: June 2, 2017.

By: Signed
Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 13th day of June, 2017.

By: Signed
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge/OAH

[This document has been modified to conform to the technical standards for publication.]

¹¹ 7 CFR § 246.12(u)(iii).