



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

Division of Family Development
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The following Decision is distributed for your information. This Decision has been made in consideration of the specific facts of this case. This Decision is not to be interpreted as establishing any new mandatory policy or procedure otherwise officially promulgated.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

REMAND DECISION

OAL DKT. NO. HPW 12803-14 C.B.

AGENCY DKT. NO. C239177 (HUDSON COUNTY DEPT OF FAM SVCS)

Petitioner appeals from Respondent Agency's denial of Emergency Assistance ("EA") in the form of Temporary Rental Assistance ("TRA"). The Agency denied Petitioner's application for TRA on the basis that Petitioner had the capacity to plan, and also because Petitioner's rent, including utilities, exceeded the Fair Market Rent ("FMR"). Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On October 10, 2014, the Honorable Richard McGill, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents into evidence.

On October 14, 2014, the ALJ issued an Initial Decision which reversed the Agency's determination. See Initial Decision at 4. The ALJ noted that the Agency's contention that Petitioner had the capacity to plan was based upon Petitioner's refusal to move into a more affordable apartment in August of 2013. See *id.* at 2. The ALJ found that the offer of TRA in August 2013 for a more affordable apartment "is too far in the past to be considered a realistic option in 2014." *Ibid.* The ALJ further concluded that under Petitioner's present circumstances, being six months pregnant with three children, Petitioner should be provided with back rent and TRA for six months, despite the apartment being above FMR and the lack of prior approval by the Division of Family Development ("DFD"). See Initial Decision at 4.

Exceptions to the Initial Decision were filed by the Agency on October 20, 2014. A rebuttal to the Agency's Exceptions was filed by Petitioner on October 22, 2014.

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As the Director of the DFD, Department of Human Services, I have considered the Initial Decision and following an independent review of the record, I hereby MODIFY the ALJ's determination and REMAND the matter to the Agency for handling consistent with this decision.

I concur with the ALJ's determination that the August 2013 refusal by Petitioner to move into a more affordable apartment is too distant in time to consider in the present matter. In regards to the Agency's assertion that it properly denied Petitioner EA on the basis that the apartment, plus a monthly average for utilities, exceeded FMR, I note that Petitioner's rebuttal to the Agency's Exceptions maintains that she resides in a 4 bedroom apartment, rather than a 3 bedroom apartment, and as such, the incorrect FMR was applied to her case.

N.J.A.C. 10:90-6.3(a)(7) states in pertinent part, "The Agency may authorize TRA when the total cost of housing inclusive of basic utilities is equal to or below the current [FMR] Amounts in excess of the current FMR will require prior approval and authorization of subsidy level by DFD." Attached to Petitioner's rebuttal is what appears to be the first page of a lease agreement which would support her contention that the Agency applied the incorrect FMR. Indeed, the FMR for Hudson County for a 4 bedroom apartment is \$1847, and the \$1673 amount, utilized by the Agency as the monthly rental costs with an average of utilities, would then clearly be within the FMR. However, a full copy of the lease was not entered into evidence in this matter. Accordingly, I am remanding this matter back to the Agency to obtain a full copy of Petitioner's lease agreement. If the full lease agreement verifies that Petitioner resides in a 4 bedroom apartment, then the FMR is \$1847, and based upon the evidence presented, Petitioner is eligible for EA/TRA.

Accordingly, the Initial Decision in this matter is MODIFIED and the matter is REMANDED back to the Agency.

OCT 27 2014

Signed Copy on File
at DFD, BARA

Jeanette Page-Hawkins
Director