



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 12870-14 L.G.

AGENCY DKT. NO. C305610 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from the Respondent Agency's denial of Emergency Assistance ("EA"). Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On October 14, 2014, the Honorable Irene Jones, Administrative Law Judge, held a plenary hearing, heard testimony, admitted documents and issued an Initial Decision which reversed the Agency determination.

Neither party submitted exceptions.

As the Director of the Division of Family Development, I independently reviewed the record and hereby MODIFY the Initial Decision, REVERSE the Agency determination, and REMAND the matter to the Agency for a determination of EA eligibility.

Petitioner receives Work First New Jersey/Temporary Assistance for Needy Families ("WFNJ/TANF") and Supplemental Nutrition Assistance Program ("SNAP"), f/k/a the Food Stamp Program, benefits.

Petitioner vacated her three-bedroom apartment in mid-2012 as the result of a fire, and shortly thereafter signed a temporary lease agreement for a five-bedroom apartment, leased to and then currently occupied by Petitioner's mother, in the same building complex. Petitioner's mother recently married and moved out of the apartment. Rent is in arrears for September 2014 and the landlord filed a tenancy complaint returnable at the end of October.

The Agency denied EA and variously contends "'receipt of [EA] is contingent upon the recipient's taking reasonable steps toward resolving the emergent situation.' As per

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lease provided, you share the apartment with your mother who is also responsible for the rent. There has not been substantial loss of housing, food and clothing by a disaster or an eviction, and the assistance unit is not in a state of homelessness or imminent homelessness due to circumstances beyond its control or the absence of a realistic capacity to plan in advance for substitute housing.”

The ALJ found it “inexplicable that the [Agency] denied [EA] herein. Its denial flies in the face of the regulation which provides for the provision of TRA when there has been a disaster. Petitioner’s emergency herein is a result of the fire that occurred in June 2012.” Based upon the foregoing, the ALJ reversed the adverse Agency determination and directed the Agency to provide Petitioner with retroactive and prospective EA in the form of Temporary Rental Assistance (“TRA”).

The purpose of EA is to meet the emergent needs of public assistance recipients, such as imminent homelessness, so that the recipient can participate in work activities without disruption and continue on to self-sufficiency. N.J.A.C. 10:90-6.1(a).

EA is in relevant part indicated when “shelter costs equal or exceed total recorded income to the WFNJ or [Supplemental Security Income] unit and the recipient is unable to document other sources of income ... which enable the individual or family to meet monthly housing/living expenses.” N.J.A.C. 10:90-6.1(a)(1). Likewise, EA is indicated when the Agency receives information that the individual or family is involved in a tenant/landlord dispute.” N.J.A.C. 10:90-6.1(a)(5). In the present matter, Petitioner’s rent potentially exceeds her countable income and the landlord filed a pending tenancy complaint based upon unpaid rent.

EA is available when there is a “substantial loss of housing, food, clothing or household furnishings or utilities by fire, flood or similar disaster, or an actual or imminent eviction from prior housing, and the assistance unit is in a state of homelessness or imminent homelessness due to circumstances beyond their control or the absence of a realistic capacity to plan in advance for substitute housing ... and the [Agency] determines that the provision of [EA] is necessary for health and safety.” N.J.A.C. 10:90-6.1(c).

The Agency and the ALJ erred in focusing upon the fire as the cause of Petitioner’s imminent homelessness. Petitioner’s previous lease agreement terminated on June 30, 2012, replaced by a temporary lease agreement for another apartment where Petitioner has lived for more than 2 years. The non-payment of rent for September 2014, not the fire, led to the pending tenancy complaint and prompted Petitioner’s application for EA.

The Agency failed to substantiate its denial of EA. There is no evidence Petitioner had the capacity to plan for substitute housing. Specifically, there is no explanation how Petitioner paid her rent for more than 2 years, and no evaluation of “all potential contributions of support to the household, including income received by ineligible

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household members.” N.J.A.C. 10:90-6.1(c)(2). Conversely, there is no evidence Petitioner’s mother was obligated to, or in fact paid Petitioner’s rent.

There is no explanation why Petitioner stopped paying rent in September 2014, and insufficient credible evidence she is eligible for EA. In addition, the ALJ erred in granting retroactive TRA because the temporary lease agreement terminated when Petitioner’s former apartment became habitable. The ALJ further erred in directing prospective TRA in the absence of credible evidence of affordable substitute housing. Neither the previous lease nor the temporary lease agreement requires Petitioner to return to her former apartment, and the three-member assistance unit is not eligible for EA in order to remain in a five-bedroom apartment. Under the circumstances, the Agency is required to determine EA eligibility and exercise its discretion to determine the most appropriate form of EA.

For the foregoing reasons, I MODIFY the Initial Decision, REVERSE the Agency determination, and REMAND the matter to the Agency for a determination of EA eligibility.

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Signed Copy on File
at DFD, BARA

Jeanette Page-Hawkins
Director