



State of New Jersey

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NATASHA JOHNSON
Director

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

FINAL DECISION

OAL DKT. NO. HPW 07803-19 D.S.

AGENCY DKT. NO. S595728012 (MIDDLESEX COUNTY BD. OF SOC. SVCS.)

Petitioner appeals from the Respondent Agency's termination of Emergency Assistance ("EA") benefits, and the imposition of a six-month period of ineligibility for EA benefits. The Agency terminated Petitioner's EA benefits, and imposed a six-month EA ineligibility penalty, contending that he failed to comply with his EA service plan ("SP") by violating motel rules. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On July 9, 2018, the Honorable Jeffrey N. Rabin, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On July 23, 2019, the ALJ issued an Initial Decision, affirming the Agency's determination.

No Exceptions to the Initial Decision were received.

As the Director of the Division of Family Development ("DFD"), Department of Human Services, I have reviewed the ALJ's Initial Decision and the record, and I hereby MODIFY the ALJ's Initial Decision and MODIFY the Agency's determination, based on the discussion below.

EA recipients are required to develop and sign an EA service plan with the Agency. See N.J.A.C. 10:90-6.6(a). Failure to comply with the requirements identified in the service plan, without good cause, shall result in termination of EA benefits and a six-month period of EA ineligibility. *Ibid.*

EA benefits shall not be provided for a period of six months to adult recipients who are terminated from an EA placement when the termination is the result of the recipient's actions, without good cause, which may include, but are not limited to, threatening and/or disruptive behavior that affects the operations of the shelter or the safety of other residents, or a violation of the shelter's health and safety policies. See N.J.A.C. 10:90-6.3(c)(3) and -6.3(c)(5). However, N.J.A.C. 10:90-6.3(e) provides that an EA benefits recipient shall be eligible for continued EA benefits for other, less severe, minor violations of a facility's policies, such as visitation or curfew. See N.J.A.C. 10:90-6.3(e); see also DFD Instruction 08-05-04 at 10. An adult EA benefits recipient who incurs two or more terminations for such less severe violations is subject to the loss of EA benefits for a period of six months. See N.J.A.C. 10:90-6.3(e)(1).

Here, the record reflects that on May 10, 2019, Petitioner executed an SP wherein he agreed, among other things, to comply with motel rules. See Initial Decision at 2; see also Exhibit R-1 at B. On June 1, 2019, Petitioner had been smoking in his non-smoking room and started a fire, violating the motel rules and fire code. See Initial Decision at 2-3; see also Exhibit R-1 at E, F. On June 3, 2019, the motel advised the Agency of the incident, and Petitioner was moved to a new placement. See Initial Decision at 3; see also Exhibit R-1 at E. On June 4, 2019, the Agency terminated Petitioner's EA benefits, effective June 14, 2019, and imposed a six-month EA ineligibility penalty for violation of his



SP. See Initial Decision at 4; see also Exhibit R-1 at G, and N.J.A.C. 10:90-6.3(c), -6.6(a). At the hearing, Petitioner acknowledged the contents of his SP, and admitted that he had violated motel rules. See Initial Decision at 2. Based upon the testimonial and documentary evidence, the ALJ found that Petitioner had violated the terms of his SP by smoking in his room, by his disruptive behavior, and by the destruction of motel property. See Initial Decision at 4; see also N.J.A.C. 10:90-6.3(c)(1), (3), (5), -6.6(a). Accordingly, the ALJ concluded that the Agency's termination of Petitioner's EA benefits, and the imposition of a six-month EA ineligibility penalty, were proper and must stand. See Initial Decision at 4; see also Exhibit R-1 at G, and N.J.A.C. 10:90-6.3(c), -6.6(a). I agree. However, for purposes of regulatory clarification, in instances such as this, where a violation of motel/shelter rules is at issue, it is the type of violation which is controlling, not the SP. See N.J.A.C. 10:90-6.3(c) versus 10:90-6.3(e) and 10:90-6.6(a). Here, the ALJ found that Petitioner's actions violated motel rules. See Initial Decision at 4. Therefore, I find that the Agency's termination of Petitioner's EA benefits, and the imposition of a six-month EA ineligibility penalty, based on both N.J.A.C. 10:90-6.3(c), and N.J.A.C. 10:90-6.6(a), is misplaced. Accordingly, the Agency's determination, as well as the Initial Decision, are modified to reflect that the correct applicable regulatory authority for the termination of Petitioner's EA benefits, and the imposition of the six-month EA ineligibility penalty, is N.J.A.C. 10:90-6.3(c) alone. See Initial Decision at 4; see also Exhibit R-1 at G.

By way of comment, while the Agency's Notification Form indicates that Petitioner's six-month EA ineligibility penalty shall run from June 14, 2019, through December 14, 2019, I find that because Petitioner has been receiving continued assistance pending the outcome of this fair hearing, the six-month EA ineligibility penalty shall begin to run as of the date of issuance of this Final Agency Decision. See Exhibit R-1 at G; see also N.J.A.C. 10:90-6.3(c).

Accordingly, the Initial Decision is hereby MODIFIED, and the Agency's determination is MODIFIED, as outlined above.

Officially approved final version.

AUG 20 2019

Natasha Johnson
Director

