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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

FINAL DECISION

OAL DKT. NO. HPW 15850-18 J.H.

AGENCY DKT. NO. C117276008 (GLOUCESTER COUNTY DIV. OF SOC. SVCS.)

Petitioner appeals from the Respondent Agency's denial of Work First New Jersey/General Assistance ("WFNJ/GA") and Emergency Assistance ("EA") benefits. The Agency denied Petitioner WFNJ/GA benefits contending that he failed to comply with the mandatory WFNJ 28-day work activity, and denied Petitioner EA benefits because he was not a WFNJ or Supplemental Security Income ("SSI") benefits recipient. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On November 2, 2018, the Honorable Elaine B. Frick, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On November 5, 2018, the ALJ issue an Initial Decision, affirming in part the Agency's decision as to WFNJ/GA benefits and reversing in part the Agency's determination to deny EA benefits.

Exceptions to the Initial Decision were filed by the Agency on November 7, 2018.

As the Director of the Division of Family Development, Department of Human Services, I have reviewed the ALJ's Initial Decision and the record, and I hereby MODIFY the ALJ's Initial Decision in part as to WFNJ/GA benefits, and REJECT the ALJ's Initial Decision in part as to the denial of EA benefits, and AFFIRM the Agency's determination to deny both WFNJ/GA and EA benefits, as discussed below.

Eligibility for WFNJ/GA cash assistance benefits for an employable applicant shall commence after the applicant has completed a minimum of 28 days in an employment-related activity through Labor and Workforce Development. See N.J.A.C. 10:90-1.2(f)(8). An employable applicant's failure to comply with the employment-related activity requirement, without good cause, shall result in a denial of the applicant's WFNJ/GA application and a 30-day period of ineligibility. Ibid.

Only WFNJ cash assistance recipients and SSI benefits recipients are eligible for EA benefits. See N.J.A.C. 10:90-6.2(a).

Here, the record reflects that Petitioner applied for WFNJ/GA and EA benefits and was required to complete the mandatory 28-day work activity in order to be eligible for said benefits. See Initial Decision at 2; see also Exhibits R-1 at 1-18, R-2 at 4-7, and N.J.A.C. 10:90-1.2(f)(8). Pending approval



of Petitioner's WFNJ/GA and EA benefits application, Petitioner was provided with immediate need housing assistance. See Initial Decision at 3, see also Exhibit R-2 at 8-9, and N.J.A.C. 10:90-1.3. It should be noted, and stressed, that immediate need housing is not considered EA benefits, and such immediate need assistance continues only until such time as the final eligibility determination for WFNJ benefits is made. See N.J.A.C. 10:90-1.3(a). The ALJ, throughout the Initial Decision, incorrectly refers to a termination of EA benefits, which it was not. Rather, upon the Agency's determination that Petitioner was ineligible for WFNJ/GA benefits, due his failure to comply with the 28-day work activity, his immediate need housing, not EA benefits, ceased. The Initial Decision is modified to correct this inaccuracy.

The record further reflects that Petitioner failed to fully comply with the 28-day work activity and, in accordance with N.J.A.C. 10:90-1.2(f)(8), the Agency denied Petitioner's application for WFNJ/GA benefits, Petitioner's immediate need assistance then ceased, and a 30-day period of ineligibility for WFNJ/GA benefits was then imposed. See Initial Decision at 2-4; see also Exhibits R-1 at 19-21, R-2 at 10, and N.J.A.C. 10:90-1.3(a). Consequently, Petitioner was ineligible for EA benefits because he was not a WFNJ or SSI benefits recipient, and the Agency denied Petitioner EA benefits. See Exhibit R-2 at 2; see also N.J.A.C. 10:90-6.2(a).

The ALJ in this matter finds that the Agency correctly denied Petitioner WFNJ/GA benefits. See Initial Decision at 7. However, while I concur with the ALJ's ultimate conclusion, that the Agency properly denied Petitioner WFNJ/GA benefits for failure to comply with the mandatory WFNJ 28-day work activity, I disagree with the ALJ's legal analysis. See Initial Decision at 5-7. Specifically, the regulatory authority relied upon by the ALJ governs the work activity requirement for WFNJ benefits recipients, not applicants, after an initial eligibility determination for receipt of said benefits, and sanctions incurred thereafter for non-compliance. See Initial Decision at 5-6; see also N.J.A.C. 10:90-4.1(a), -4.13. That regulatory authority does not apply to Petitioner, who was not yet a WFNJ benefits recipient, but rather, was an applicant for WFNJ/GA benefits required to complete a 28-day work activity in order to be eligible for said benefits. See Initial Decision at 2; see also Exhibit R-1 at 1-18, and N.J.A.C. 10:90-1.2(f)(8). Petitioner failed to complete that 28-day work activity, which resulted in a 30-day ineligibility period for receipt of WFNJ/GA benefits, not a 30-day sanction governed by N.J.A.C. 10:90-4.13, as opined by the ALJ. See Initial Decision at 6-7; see also Exhibit R-1 at 20-21, and N.J.A.C. 10:90-1.2(f)(8), -4.13. Further, unlike a sanction imposed pursuant to N.J.A.C. 10:90-4.13, under N.J.A.C. 10:90-1.2(f)(8), Petitioner is not afforded the opportunity to come into compliance prior to the expiration of the 30-day ineligibility period. See Initial Decision at 7. Based on the foregoing, and in accordance with N.J.A.C. 10:90-1.2(f)(8), I find that the Agency's denial of WFNJ/GA benefits to Petitioner, and its imposition of a 30-day ineligibility period for WFNJ/GA benefits, was proper and must stand. See Exhibit R-1 at 19. The Initial Decision is also modified to reflect this finding.

With respect to the Agency's denial of EA benefits to Petitioner, I reject the ALJ's finding that Petitioner is eligible for EA benefits. See Initial Decision at 7. Specifically, because the ALJ mistakenly classified the 30-day ineligibility penalty imposed upon Petitioner for receipt of WFNJ/GA benefits as a sanction under N.J.A.C. 10:90-4.13, the ALJ erroneously determined that Petitioner was eligible for EA benefits in accordance with N.J.A.C. 10:90-6.1(c)(4) (stating that, "[a]n adult household member who incurs a sanction as a result of his or her failure to comply with the WFNJ program work requirements may apply for and receive emergency assistance for himself or herself and the eligible unit while in sanction status"), and N.J.A.C. 10:90-6.1(c)(5) (providing that a household member whose WFNJ benefits had been terminated, and whose WFNJ case had been closed due to a sanction may continue to receive EA benefits for up to one month thereafter). See Initial Decision at 5-7. Rather, in accordance with applicable regulatory authority, I find that as a consequence of Petitioner's failure to comply with his 28-day work activity, he was correctly denied WFNJ/GA benefits, his immediate need assistance then ceased, and a 30-day ineligibility period for receipt of WFNJ/GA benefits was imposed. See Initial Decision at 2-4; see also Exhibit R-1 at 19, and N.J.A.C. 10:90-1.2(f)(8), -1.3(a). Therefore, as



Petitioner was not a WFNJ/GA or SSI benefits recipient, he was ineligible for EA benefits. See N.J.A.C. 10:90 6.2(a). Based on the foregoing, I find that the Agency's denial of EA benefits to Petitioner was also proper and must stand. See Exhibit R-2 at 2.

By way of comment, for clarification, a 30-day WFNJ/GA period of ineligibility, is not a sanction, but rather, is a penalty. See N.J.A.C. 10:90-1.2(f)(8). Particularly, a sanction is generally imposed for failure to comply with a WFNJ program requirement, after initial eligibility for WFNJ benefits has been determined, and can be cured, and lifted, once a WFNJ benefits recipient comes into compliance. See N.J.A.C. 10:90-4.13. A penalty, or period of ineligibility, however, such as a 30-day WFNJ/GA ineligibility period or other penalties imposed in the WFNJ regulations, cannot be cured prior to the expiration of the penalty period. See N.J.A.C. 10:90-1.15 (imposing upon applicants for WFNJ benefits a 90 day period of ineligibility due to a voluntary cessation of employment), -4.14 (imposing upon WFNJ benefits recipients, a two month period of ineligibility for voluntarily ceasing employment), -6.1(c)(3) (imposing a six month period of ineligibility for EA benefits for various reasons), -6.3(c) (imposing a six month period of ineligibility for EA benefits due to termination from housing placements, without good cause), -6.6(a) (imposing a six month period of ineligibility for EA benefits for failure to comply with one's service plan).

By way of further comment, Petitioner may reapply for WFNJ/GA and EA benefits after the expiration of his 30-day WFNJ benefits ineligibility period, on November 28, 2018. See Exhibit R-1 at 19.

Accordingly, the Initial Decision is hereby MODIFIED in part, as the denial of WFNJ/GA benefits, and REJECTED in part, as to the denial of EA benefits, and the Agency's determination as to both WFNJ/GA and EA benefits is AFFIRMED.

Officially approved final version.

Natasha Johnson
Director

