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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 **06445-20 A.C.**

AGENCY DKT. NO. **C107403015 (OCEAN COUNTY BOARD 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 ("OAL") for a hearing. On July 16, 2020, the Honorable Elia A. Pelios, Administrative Law Judge ("ALJ"), held a telephonic plenary hearing, took testimony, and admitted documents. After the hearing, Petitioner was provided with additional time to provide the ALJ with documents supporting his position. However, no additional documents were forthcoming, and at the close of business on July 16, 2020, the record then closed. On July 17, 2020, the ALJ issued an Initial Decision, affirming the Agency's determination.

No Exceptions to the Initial Decision were received.

As Assistant Commissioner, 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, as discussed below.

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." See N.J.A.C. 10:90-6.3(c)(3). 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, Petitioner's multiple SPs required him to comply with motel/shelter rules. See Initial Decision at 7; see also Exhibits R-7, R-14, R-16, R-21, R-22, and R-28. The ALJ found that Petitioner had been



terminated from several motel placements for violating motel rules by repeatedly allowing unauthorized visitors in each of those placements, and by engaging in disruptive actions and behaviors. See Initial Decision at 2-5; see also Exhibit R-5. The witness testimony of several motel managers, as well as voluminous documentary evidence, substantiates said motel violations. Id. at 3-4; see also Exhibits R-8, R-9, R-10, R-12, R-13, R-15, R-17, R-18, R-19, R-23 through R-27, R-29, R-30, R-32, R-33, R-34. Although Petitioner challenged the termination from his final motel placement, and had a witness testify on his behalf regarding that particular termination, the ALJ found that said testimony involved a termination which actually took place after the Agency had issued the Adverse Action Notice in this matter, terminating Petitioner's EA benefits, and as such, was not at issue in this appeal and was irrelevant. See Initial Decision at 6-7; see also Exhibits R-1 and R-36 through R-39. Based on the foregoing, the ALJ concluded that Petitioner had violated the terms of his SP, without good cause, and affirmed the Agency's termination of Petitioner's EA benefits and the imposition of a six-month EA ineligibility penalty. See Initial Decision at 7-9; see also Exhibits R-1, R-3, and N.J.A.C. 10:90-6.6(a). Of note, the record reflects that Petitioner suffers from mental health issues, and according to his therapist's testimony, Petitioner is consistently treating for said health issues, and that with continued care, he should be able to live independently on his own. See Initial Decision at 6. The record also reflects that the Agency was aware of, and had taken into consideration, Petitioner's mental health issues as it had continued to place Petitioner at various motels in an attempt to keep Petitioner housed. See Initial Decision at 2-3. Further, I take official notice of the fact that, in a prior Final Agency Decision ("FAD"), OAL Docket Number 10247-19, issued August 7, 2019, the Agency had offered Petitioner placement at a residential facility, but he had refused such placement. See N.J.A.C. 1:1-15.2(a) and N.J.R.E. 201(b)(4). The Agency continues to recommend that a residential housing placement would be best for Petitioner. See Initial Decision at 3.

Based upon the facts presented in this matter, I agree with the Agency's determination and the ALJ's conclusion that Petitioner failed to comply with his SPs. See Initial Decision at 7-8; see also Exhibit R-1. However, in instances such as this, where a violation of motel/shelter rules are 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). In this instance, the record indicates that Petitioner's disruptive behaviors and his continued allowance of unauthorized visitors in his motel rooms violated motel rules, and on those bases, I find that Petitioner is ineligible for EA benefits for a period of six months in accordance with both N.J.A.C. 10:90-6.3(c)(3), (e)(iii). See Initial Decision at 2-5; see also Exhibits R-8, R-9, R-10, R-12, R-13, R-15, R-17, R-18, R-19, R-23 through R-27, R-29, R-30, R-32, R-33, and R-34. Accordingly, I find 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 Exhibits R-1, R-3; see also N.J.A.C. 10:90-6.3(c)(3), (e)(iii). The Initial Decision and the Agency's determination are modified to reflect these findings with respect to the applicable legal basis in this case.

By way of comment, as 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.

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

AUG 10 2020

Officially approved final version.

Natasha Johnson
Assistant Commissioner

