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Assistant Commissioner

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 **08691-21 C.K.**

AGENCY DKT. NO. **C060988018 (SOMERSET 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 had violated rooming house rules, which resulted in his termination from his housing placement, thereby causing his own homelessness. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On November 9, 2021, the Honorable Elia A. Pelios, Administrative Law Judge ("ALJ"), held a telephonic plenary hearing, took testimony, and admitted documents. On December 2, 2021, 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 AFFIRM in part, and REVERSE in part, the Agency's determination, based on the discussion 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, "[t]hreatening and/or disruptive behavior that affects the operations of the shelter or the safety of other residents" and/or "[d]estruction of shelter property or the property of others." See N.J.A.C. 10:90-6.3(c)(2), (3); see also DFD Instruction ("DFDI") No. 21-02-03. 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 DFDI No. 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).

N.J.A.C. 10:90-6.3(c) states, "EA shall not be provided to adult recipients who are terminated without good cause from an EA placement, such as a hotel/motel shelter or transitional housing for a period of six months when the termination is the result of the adult recipient's actions[.]" However, "[p]rior to EA termination, the [Agency] shall review with the recipient the reason(s) for termination. If additional



barriers are identified that may have prevented EA compliance, then the recipient is considered to have good cause and shall not be terminated and a penalty shall not be imposed. The recipient shall be required to follow through with services to address those barriers for continued EA eligibility. Such services shall be identified as mandatory activities in the EA service plan.” N.J.A.C. 10:90-6.3(g).

Here, the ALJ found, Petitioner acknowledged, and the record substantiates, that Petitioner had repeatedly violated rooming house rules by engaging in disruptive and destructive behaviors, which resulted in his termination from his EA placement. See Initial Decision at 2-3; see also Exhibits R-1 at 17-18. Moreover, the ALJ found that Petitioner was aware that such behaviors would result in a termination of his EA benefits. See Initial Decision at 4; see also Exhibit R-1 at 14. Based on the testimony and documentary evidence provided, the ALJ concluded that Petitioner’s behavior directly caused his homelessness, and on that basis, affirmed the Agency’s termination of Petitioner’s EA benefits. See Initial Decision at 4-6; see also Exhibit R-1 at 6-13, and N.J.A.C. 10:90-6.1(c)(3)(vi).

While I agree with the ALJ’s ultimate conclusion, in instances such as this, where violations of rooming house rules are at issue, it is the type of violation which is controlling. See Initial Decision at 4-6; see also 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 and destructive behaviors, resulted in his termination from his rooming house placement, and on that basis, I find that Petitioner is ineligible for EA benefits in accordance with N.J.A.C. 10:90-6.3(c) (2), (3). See Initial Decision at 2-3. Accordingly, I find that the Agency’s termination of Petitioner’s EA benefits was proper and must stand. Id. at 1, 5; see also Exhibit R-1 at 6-13. The Initial Decision is modified to reflect this finding with respect to the applicable legal basis in this matter.

Further, the record reflects that, although Petitioner had been receiving intense treatment for alcohol abuse through the Agency referred Substance Abuse Initiative/Behavioral Health Initiative (“SAI/BHI”) program, he had continued to drink and engage in aggressive behavior. See Initial Decision at 2. However, as it appears that Petitioner continued to have barriers that inhibited his ability to comply with EA requirements, and as Petitioner has been attending his current treatment program without any issues, I find that he is not subject to a six-month EA ineligibility penalty. Id. at 4; see also Exhibit R-1 at 23, and N.J.A.C. 10:90-6.3(g). Accordingly, I reverse the Agency’s imposition of such penalty. See Exhibit R-1 at 7. The Initial Decision is also modified to reflect this finding.

By way of comment, Petitioner is advised that he may reapply for EA benefits. However, Petitioner is further advised that he must accept the housing placement deemed appropriate by the Agency, as required to address the higher level of care needed, and that failure to accept such placement may result in a termination of EA benefits and the imposition of a six-month EA ineligibility. See Initial Decision at 2; see also N.J.A.C. 10:90-6.3(a)(1). Additionally, Petitioner is advised that any future violation of hotel/motel/shelter/rooming house rules may result in a termination of EA benefits and the imposition of a six-month EA ineligibility penalty. See N.J.A.C. 10:90-6.3(c), (e).

Accordingly, the Initial Decision is hereby MODIFIED, and the Agency’s action is AFFIRMED in part and REVERSED in part, as outlined above.

Officially approved final version.

January 11, 2022

Natasha Johnson
Assistant Commissioner

