



## State of New Jersey

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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 **05664-22 J.D.**

AGENCY DKT. NO. **S464404014 (MORRIS CO. OFFICE OF TEMP ASSISTANCE)**

Petitioner appeals from the Respondent Agency's denial of Work First New Jersey/Temporary Assistance for Needy Families ("WFNJ/TANF") and Emergency Assistance ("EA") benefits. The Agency denied Petitioner WFNJ/TANF benefits for failing to comply with WFNJ program requirements by not completing the required interview for receipt of benefits, and was denied EA benefits because she was not a WFNJ, nor a Supplemental Security Income ("SSI") benefits recipient. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On August 11, 2022, the Honorable Andrew M. Baron, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On September 2, 2022, the ALJ issued an Initial Decision, reversing the Agency's EA determination.

Exceptions to the Initial Decision were received from the Agency on September 7, 2022.

As Assistant Commissioner, 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, REVERSE the Agency's determinations and REMAND this matter to the Agency for action, based on the discussion below.

Only WFNJ cash assistance recipients and SSI recipients are eligible for EA benefits. See N.J.A.C. 10:90-6.2(a). In order to be eligible for EA benefits, N.J.A.C. 10:90-6.1(c) provides, in pertinent part, that the individual must have 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 to avoid their emergent situation. Documentation must be presented to the Agency demonstrating that an eviction is pending or has occurred. N.J.A.C. 10:90-6.3(a)(1)(ii).

Pursuant to N.J.A.C. 10:90-9.1(b), an Agency must provide both adequate and timely notice advising of a termination, denial or suspension of welfare benefits. Adequate notice is a written notice outlining the intended action and the reasons for the action. N.J.A.C. 10:90-9.1(a). Pursuant to, N.J.A.C. 10:90-9.1(d) (11), "Timely notice may be dispensed with but adequate notice shall be sent not later than the effective



date of the action when: [a]n application for assistance is being denied and no assistance payment has been made[.]”

Based upon an independent review of the record, I note initially that there appear to be conflicting facts, as contained in the Initial Decision, and in the evidentiary record in this case. It does appear that the Agency did attempt to contact Petitioner via telephone on May 5, 2022, several hours after the initial interview time scheduled, as per Petitioner’s request, but Petitioner did not answer. See Exhibit R-2 at 10. While the ALJ states that Petitioner went to the Agency offices in person on May 17, 2022, after being unable to speak with an Agency representative on the telephone, Agency case notes entered into evidence, reflect that Petitioner spoke with two Agency employees over the telephone on that date, including Ms. Nemecek, who testified at the hearing. See Initial Decision at 3; see also Exhibit R-2 at 13, 17. The ALJ in this matter finds that the Agency should have accommodated Petitioner and conducted the WFNJ required interview at the time that she appeared at the Agency offices. See Initial Decision at 3. I respectfully disagree with this finding, as to do so would establish an undue precedent that would clearly effect the operation of the Agency. Moreover, I note that the Agency case notes reflect that Petitioner, while at the Agency offices, “expressed understanding the expectation to comply with the rescheduled interview for her TANF application,” set for May 23, 2022, yet, on that date, despite several attempts, Petitioner could not be reached for the requisite interview and a voicemail message was left. See Exhibit R-2 at 13, 15.

The record also reflects that Petitioner received separate adverse action notices in this matter, one pertaining to the denial of WFNJ/TANF benefits, the other to the denial of EA benefits. See Exhibits P-5 at 4-8, and R-1 at 1-5. I respectfully disagree with the ALJ that the EA denial notice was deficient, as there are two separate denial notices presented here, rather than both denials contained in only one notice. However, what is problematic here is that, while both adverse action notices are dated May 31, 2022, it appears that the WFNJ/TANF denial notice was not actually sent to Petitioner until it was requested by her via email on June 10, 2022. See Exhibits P-1 at 1, and P-5 at 1. As it is wholly unclear if the adverse action notices were, in accordance with applicable authority, in fact mailed to Petitioner on the date the adverse actions were taken, I find that adequate notice did not occur in this matter, and on this basis, I find that the Agency’s WFNJ/TANF and EA denials must be reversed, and the case remanded to the Agency to reevaluate Petitioner for WFNJ/TANF and EA eligibility, on an expedited basis. See N.J.A.C. 10:90-9.1(d)(11). Petitioner is advised that she must comply with all program requirements, and I direct that Petitioner and the Agency reach a mutually agreeable time and date to conduct the requisite WFNJ interview. See N.J.A.C. 10:90-2.2. Following the review of Petitioner’s application for WFNJ/TANF and EA benefits, if Petitioner is denied benefits on a substantive basis, she may request another fair hearing on the substantive denial(s). The Initial Decision is modified to reflect the above findings.

Finally, Petitioner also made additional allegations that she had been discriminated against in her dealings with the Agency. See Initial Decision at 4. The ALJ, however, concluded that the Agency had not acted in a discriminatory manner. Id. at 5. I agree with this conclusion.

By way of comment, I have reviewed the Exceptions submitted by the Agency in this matter, and I find that the arguments made therein do not alter my decision in this matter. Additionally, I note that mere discussion of scheduling of a matter with an ALJ’s chambers, without any substantive discussion of the matter to be decided, does not present a conflict of interest.

Accordingly, the Initial Decision is hereby MODIFIED, the Agency’s determinations are REVERSED, and the matter is REMANDED to the Agency for action, as outlined above.



Officially approved final version.

September 15, 2022

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Natasha Johnson

Assistant Commissioner

