



## 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 **07663-22 J.K.**

AGENCY DKT. NO. **S613189012 (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 violated motel rules, and thereby, violated his EA service plans (SP). Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. A hearing was initially scheduled for September 30, 2022, the parties appeared, and during the prehearing conference, the hearing was adjourned at the parties' request. On October 27, 2022, the Honorable Tricia M. Caliguire, Administrative Law Judge ("ALJ"), held a telephonic plenary hearing, took testimony, and admitted documents. On November 7, 2022, the ALJ issued an Initial Decision, reversing the Agency's determination.

No Exceptions to the Initial Decision were received.

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, and REVERSE 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, "[v]iolation of health and safety policies," such as unauthorized cooking and/or smoking in one's motel room. See N.J.A.C. 10:90-6.3(c)(5).

Here, the record reflects that, by notice dated August 2, 2022, the Agency terminated Petitioner's EA benefits, effective September 2, 2022, and imposed a six-month EA ineligibility penalty, contending that Petitioner had violated motel rules, resulting in his termination from his motel placement, and thereby violating his SPs. See Initial Decision at 4-6; see also Exhibits R-2, R-3, R-4, R-8, and N.J.A.C. 10:90-6.3(c)(5), -6.6(a). Said termination of Petitioner's EA benefits was based on a complaint letter from staff at the motel to the Agency, advising that Petitioner had violated motel rules by cooking and smoking in his room, resulting in his termination from that motel. See Initial Decision at 5; see also Exhibit R-5. Of note, the ALJ found that the motel complaint letter was not dated and was not



signed. See Initial Decision at 5. The Agency also relied upon an Agency Investigator's report and photographs of the alleged violations for said termination. See Initial Decision at 5; see also Exhibit R-6. R-7. However, no one from the motel, nor the Investigator, nor anyone from the Agency with direct knowledge of the alleged violations, were present at the hearing to attest to the truth of the claims made in those documents. See Initial Decision at 5. Although Petitioner admitted that he had food and a plugged-in air fryer in his room, he denied cooking in his room. Ibid. Petitioner also denied smoking in his room. Ibid. The ALJ found that the motel letter, the Investigator's report, and the Agency's testimony, were hearsay within the dictates of the Residuum Rule, not supported by credible evidence in the record. See Initial Decision at 2-3; see also N.J.A.C. 1:1-15.5. The ALJ also found that the Investigator's photographs of a plugged-in air fryer are not proof that Petitioner had cooked in his room. See Initial Decision at 5 fn 3; see also Exhibit R-7. Based on the foregoing, the ALJ concluded that the Agency had failed to meet its burden of proof to show, by a preponderance of the evidence, that Petitioner had violated his SPs by violating motel rules. See Initial Decision at 6-7; see also N.J.A.C. 10:90-6.6(a). Accordingly, the ALJ further concluded that the Agency's termination of Petitioner's EA benefits and the imposition of a six-month EA ineligibility penalty, were improper and must be reversed. See Initial Decision at 7; see also Exhibit R-8, and N.J.A.C. 1:1-15.5.

While I agree with the ALJ's final conclusion in this matter, it should be noted that in instances such as this, where a violation of shelter rules are at issue, it is the type of violation which is controlling, and not the SP. See N.J.A.C. 10:90-6.3(c) versus 10:90-6.3(e). The Initial Decision is modified to reflect this finding with respect to the applicable legal basis in this matter. See Initial Decision at 6-7.

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

Officially approved final version.

December 01, 2022

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Natasha Johnson  
Assistant Commissioner

