



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 **10360-20 T.A.**

AGENCY DKT. NO. **C102604016 (PASSAIC COUNTY BOARD OF SOC. SVCS.)**

Petitioner appeals from the Respondent Agency's denial of Emergency Assistance ("EA") benefits in the form of five (5) months of past due rent. The Agency denied Petitioner EA benefits, contending that she owed more than three (3) months back rent and that the apartment was not affordable moving forward. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. A telephonic hearing was initially scheduled for December 10, 2020, but was adjourned by the parties to January 25, 2021, to allow for a resolution of the underlying matter. The matter was then adjourned to March 1, 2021, to allow for additional time for resolution. The matter was again adjourned by the parties to March 30, 2021. The matter was adjourned for one final time to May 11, 2021. On May 11, 2021, the Honorable Julio C. Morejon, Administrative Law Judge ("ALJ"), held a telephonic plenary hearing, took testimony, and admitted documents. The record remained open until May 25, 2021, to allow the parties to submit written summations. Written summations were submitted on May 25, 2021, and thereafter, the record remained open in accordance with Executive Order No. 127, as extended by N.J.S.A. 26:13-32, until January 1, 2022, at which time the record then closed. On January 20, 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 ("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, REVERSE the Agency's determination, and REMAND the matter to the Agency for action, based on the discussion below.

In order to be eligible for EA benefits, the recipient must demonstrate that his/her shelter costs equal or exceed the total income available to his/her assistance unit. See N.J.A.C. 10:90-6.1(a)(1). As part of the determination of EA benefits eligibility, the Agency must evaluate all potential contributions of support to the household, including income received by ineligible household members, particularly when determining the amount of temporary rental assistance. See N.J.A.C. 10:90-6.1(c)(2). Further, those individuals who reside with, but are not members of, the assistance unit, are responsible for paying their per capita/pro rata share of the housing costs. See DFD Instruction ("DFDI") No. 08-5-4 at 10-11.



N.J.A.C. 10:90-6.3(a)(5) provides, in pertinent part, that payment shall be authorized up to any three calendar months of retroactive rental payments if it will prevent actual eviction or foreclosure. Payment for more than three calendar months of retroactive rental payments shall be made only under extraordinary circumstances subject to authorization by DFD. Ibid.

EA benefits, in the form of Temporary Rental Assistance ("TRA"), may be provided "when the recipient is facing eviction, in order to maintain current permanent housing which had been previously affordable but which is no longer affordable for reasons such as, but not limited to, loss of employment, temporary unemployment or underemployment and it is anticipated that such housing will again become affordable; or when it is determined that maintaining the unit in the current housing arrangement is both the least costly alternative and serves to preserve the family structure while the search for affordable housing continues." See N.J.A.C. 10:90-6.3(a)(6).

N.J.A.C. 10:90-6.3(a)(7) states, in pertinent part, "The Agency may authorize TRA when the total cost of housing inclusive of basic utilities is equal to or below the current Fair Market Rent (FMR)[.]" Amounts in excess of the current FMR will require prior approval and authorization by DFD. See N.J.A.C. 10:90-6.3(a)(7)(i)(1).

EA benefits are limited to 12 lifetime cumulative months, plus limited extensions for an "extreme hardship." See N.J.A.C. 10:90-6.4(a), (b). A Supplemental Security Income ("SSI") recipient may qualify for one six-month EA extension if the Agency determines that a case of extreme hardship exists pursuant to N.J.A.C. 10:90-6.4(b)(1). See N.J.A.C. 10:90-6.4(c). Thus, the maximum amount of EA benefits that an SSI recipient may receive is 18 months.

The State of New Jersey Senate Bill, No. S866, P.L. 2018, c. 164, effective December 20, 2018 ("S866") extends EA benefits eligibility for certain categories of individuals including, but not limited to, SSI benefits recipients who have exhausted their lifetime limit of EA benefits, plus all available extensions. See DFDI No. 19-02-01.

Based on an independent review of the record, I make the following findings regarding the Agency's denial of EA benefits to Petitioner. Petitioner's household consists of four EA benefits eligible persons, and one ineligible adult child. See Initial Decision at 2-3; see also Exhibit R-1 at 38. The record also reflects that Petitioner's household income is \$1,232.36, her rent is \$1,530.98, plus utilities, she owes five months of past due rent, and she is facing eviction. See Initial Decision at 2-3; see also Exhibits P-1 through P-5, R-1 at 11-43. Further, the record indicates that Petitioner has received 61 months of EA benefits, and as such, she has exhausted her lifetime limit of EA benefits, plus two six-month extreme hardship extensions. See Initial Decision at 3; see also Exhibit R-1 at 44-58, and N.J.A.C. 10:90-6.4(a), (b). While I concur with the ALJ's ultimate conclusion, reversing the Agency's denial of EA benefits to Petitioner in the form of five months back rent for the period of April 2020, through August 2020, it is unclear from the record whether or not Petitioner is eligible for such EA benefits. See Initial Decision at 2-5; see also Exhibit R-1 at 1-2, and N.J.A.C. 10:90-6.3(a)(5), -6.4(a), (b). Specifically, it is unclear if Petitioner's rent is within the 2020 Fair Market Rent for Passaic County, if the payment of five months of past due rent will avoid Petitioner's eviction, and whether Petitioner's rent will be affordable going forward. See Initial Decision at 2-4; see also N.J.A.C. 10:90-6.3(a) (5), (6), (7), and Informational Transmittal No. 19-28. Moreover, Petitioner's adult child will be responsible for paying her pro rata share of the five months back rent. See Initial Decision at 3; see also N.J.A.C. 10:90-6.1(c) (2), and DFDI No. 08-5-4 at 10-11. Additionally, I concur with the ALJ's conclusion, and the record substantiates, that Petitioner has exhausted her EA benefits and must apply for, and be found eligible for, an extension of EA benefits pursuant to S866. See Initial Decision at 6; see also Exhibit R-1 at 44-58, and N.J.A.C. 10:90-6.4(a), (b), S866, and DFDI No. 19-02-01. Finally, I concur with the ALJ's conclusion that the Agency's denial of EA benefits to Petitioner on the basis that there was a co-signer on the lease was improper. See Initial Decision at 6. Based on the foregoing, I reverse the Agency's denial of EA benefits in the form of five months of back rent for the period of April 2020, through August 2020, and remand the matter to the Agency to reevaluate Petitioner's eligibility for such EA benefits, as discussed above. See Exhibit R-1 at 1-2. The Initial Decision is modified to reflect these findings.



By way of comment, as an EA service plan (“SP”) violation was not a transmitted issue, and was not included on the Agency’s adverse action notice as a narrative basis for its denial of EA benefits to Petitioner, that issue has not been addressed in this Final Agency Decision. See Exhibit R-1 at 1-2. Rather, it appears that the Agency erroneously cited to N.J.A.C. 10:90-6.6(a) in its adverse action notice. Ibid. Nevertheless, I concur with the ALJ’s conclusion that pursuant to the State of New Jersey, Department of Human Services, Notice of Rule Waiver Pursuant to Executive Order No. 103, a denial of EA benefits due to an SP violation would have been improper at the time of the Agency’s denial of EA benefits to Petitioner on September 24, 2020. See Initial Decision at 6, and DFDI No. 20-04-01, No. 20-04-07, No. 20-07-03, and No. 21-02-03.

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

Officially approved final version. February 25, 2022

Natasha Johnson
Assistant Commissioner

