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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 **02649-25 R.C.**

AGENCY DKT. NO. **C079334016 (PASSAIC COUNTY BOARD OF SOC. SVCS.)**

Petitioner appeals from the Respondent Agency's denial of Emergency Assistance ("EA") benefits in the form of three months of past due rent. The Agency denied Petitioner EA benefits, contending that he had the capacity to plan, but failed to do so, thereby causing his own homelessness. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. The matter was initially scheduled for April 7, 2025, at which time the parties requested an adjournment for settlement discussions. The matter was rescheduled for April 30, 2025, at which time the parties informed the tribunal they had not reached a settlement. On May 1, 2025, the Honorable Julio C. Morejon, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. The record was held open until May 2, 2025, to allow for additional submissions, and the hearing reconvened on May 5, 2025, for the entering of additional documents and testimony, and then closed. On May 8, 2025, the ALJ issued an Initial Decision, reversing the Agency's determination.

Exceptions to the Initial Decision were filed by the Agency on May 8, 2025. Cross Exceptions were filed by Petitioner's counsel on May 19, 2025.

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, 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.

Only WFNJ cash assistance recipients and Supplemental Security Income ("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, 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 (emphasis added).



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).

Here, the record reveals that Petitioner applied for Work First New Jersey/Temporary Assistance to Needy Families (“WFNJ/TANF”) benefits, and EA benefits, on January 10, 2025. See Initial Decision at 2. The WFNJ/TANF benefits application was approved, and the EA application was denied, with the Agency citing that Petitioner had failed to plan. *Ibid.*; see also N.J.A.C. 10:90-6.1(c). In September, 2024 Petitioner and his two children (aged 14 and 21), experienced a fire, due to a wiring issue, at their prior residence and moved to their current residence, which has a monthly rental expense of \$2,200. See Initial Decision at 3-4; see also Exhibit R-1. Petitioner’s security deposit was paid for by a charitable organization, and he testified that he planned to pay rent with his unemployment insurance benefits and savings, as Petitioner was in receipt of unemployment insurance benefits through November 16, 2024. See Initial Decision at 3-4; see also Exhibit R-3, P-4. At the time that he applied for EA benefits on January 10, 2025, Petitioner owed back rent for November, 2024, December, 2024 and January, 2025. See Initial Decision at 3; see also Exhibits P-1, R-2. On March 16, 2025, Petitioner was found eligible for monthly Retirement, Survivors, and Disability Insurance (“RSDI”) benefits in the amount of \$2,222, with his first benefits payment being received on April 23, 2025. See Initial Decision at 3; see also Exhibit P-2. Additionally, Petitioner received a tax refund of \$3,808 during February, 2025, which he utilized to pay rental arrears for February, March, and April, 2025. See Initial Decision at 4; see also Exhibit P-3. The Agency representative testified that, following a review of Petitioner’s EA application, it was determined that he failed to plan as to how he would afford his rent upon moving to his current residence, which was why his application was denied. See Initial Decision at 5. The Agency representative testified that Petitioner was not questioned as to why he left his prior housing, the amount he had in savings, nor if he had filed any disability claim. *Ibid.* The Agency representative testified that she spoke with Petitioner’s landlord on May 2, 2025, and was informed that Petitioner had paid partial rent for September 2024 (\$400), partial rent for October 2024 (\$900), full rent of \$2,200 for November, December, and January, 2025, and partial rent for April 2025 (\$1,200). *Ibid.* Another Agency representative testified that the two-bedroom rental unit exceeded the fair market rental (“FMR”) for Passaic County, which for Fiscal Year 2025, is \$2,072 for a two-bedroom unit, inclusive of utilities. *Ibid.*; see also Division of Family Development Informational Transmittal No. 24-19.

The ALJ found Petitioner credibly testified to his intent to pay rent from his unemployment insurance benefits, pending RSDI claim, tax return, and/or future employment. See Initial Decision at 6. Further, the ALJ found that Petitioner’s landlord had not yet initiated eviction proceedings, and that the testimony provided by the Agency representative as to her discussions with Petitioner’s landlord contradicted the Petitioner’s testimony that he owes only three months of back rent, and is hearsay evidence which does not satisfy the residuum rule. *Ibid.*; see also N.J.A.C. 1:1-15.5. The Agency contended that Petitioner should not have rented an apartment when he had no source of income other than his unemployment insurance benefits, however, the ALJ found that the Agency failed to consider why Petitioner had to leave his prior housing, that he had savings he planned to utilize, and that he had a pending disability claim. See Initial Decision at 8. Further, the ALJ acknowledged that the Agency contended that the rent for the two-bedroom apartment exceeded the FMR of Passaic County, however, the ALJ found that the Agency did not discuss this with Petitioner, nor consider if the matter would be considered for a waiver of the FMR. See Initial Decision at 8-9. Accordingly, the ALJ concluded that the Agency’s denial of Petitioner’s EA application was improper, and the matter should be remanded to the Agency for consideration of additional information to accurately assess Petitioner’s eligibility for EA benefits. See Initial Decision at 9-10. I agree, and direct that the Agency reassess Petitioner’s EA application, specific to the payment of three months back rent, however, as explained below, such payment shall be limited to two-thirds of each month’s rent.

Importantly, and left unaddressed by the ALJ in this matter, it should be noted that while Petitioner himself may be eligible for EA benefits for himself and his minor child, that would only cover a two-thirds portion of each month of the back rent, and not the full amount owed, as the Petitioner’s adult son is residing in the apartment, is not presently EA eligible, and would be responsible for his pro-rata share of the rent owed. See DFDI No. 08-5-4 at 10-11. While the ALJ states that the other two persons residing in the apartment are Petitioner’s children, the ALJ mistakenly overlooks the fact that one of the children is 18 years of age or over, and as such, is not WFNJ/TANF eligible. See N.J.A.C. 10:90-2.7(b). In order for the Agency to pay the full back rent owed, all three persons residing in the apartment would need to be EA eligible. *Ibid.*; see also N.J.A.C. 10:90-6.2(a).

Further, as to the issue of FMR, I find that while Petitioner’s two-bedroom rental cost exceeds the FMR for Passaic County, the rent does not exceed the FMR for a three-bedroom rental for Passaic County, which would be reasonable under the circumstances based upon the composition of Petitioner’s household. As such, I find that potential partial or full payment of the three months of back rent should not be inhibited solely by the rent exceeding the FMR.



Based on the foregoing, I am remanding this matter for action as follows. The Agency shall evaluate Petitioner's EA application for eligibility, taking into consideration the information proffered at the hearing as to the circumstances of loss of his prior housing and his intent to afford his new housing. Such application shall be considered regarding payment of two-thirds of the back rent for each month of eligibility. Petitioner's adult son shall apply for General Assistance ("GA"), and the Agency shall expedite the WFNJ/GA application of Petitioner's adult son and determine eligibility for both cash and EA benefits. Should Petitioner and his adult son residing in the apartment be determined eligible for EA benefits, then the Agency is to pay the back rent, and consider the household's eligibility for prospective EA benefits, as applicable. The Initial Decision is modified to reflect the above findings.

By way of comment, I have reviewed the Agency's Exceptions and find that the arguments made therein do not alter my decision in this matter.

By way of further comment, Petitioner's counsel is advised that no replies or cross-exceptions are allowed in DFD fair hearings. See N.J.A.C. 1:10-18.2.

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. June 05, 2025

Natasha Johnson
Assistant Commissioner

