



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

Division of Family Development
P.O. Box 716
TRENTON, NEW JERSEY 08625

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Jennifer Velez
Commissioner

Jeanette Page-Hawkins
Director
Tel. (609) 588-2000

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

REMAND DECISION

OAL DKT. NO. HPW 8766-14 N.S.

AGENCY DKT. NO. GA421812 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from Respondent Agency's termination of his Work First New Jersey/General Assistance ("WFNJ/GA") benefits. The Agency terminated Petitioner's benefits as it contended that Petitioner had voluntarily quit his employment without good cause. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law ("OAL") for a hearing. On August 7, 2014, the Honorable Richard McGill, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents into evidence.

On August 11, 2014, the ALJ issued his Initial Decision reversing the Agency's determination as to Petitioner's WFNJ/GA benefits. The ALJ also reversed a purported termination of Emergency Assistance ("EA") benefits, which was not an issue transmitted to the OAL for determination. While the ALJ found that based upon the regulatory definition of "voluntary quit," Petitioner had, indeed, voluntarily quit his employment without good cause, the ALJ reversed the Agency's determination due to an untimely notice issue. See Initial Decision at 4-5. The ALJ determined the Agency's adverse action notice to Petitioner, Exhibit R-2, was untimely, due to the retroactive effective date contained therein, and ordered that Petitioner's WFNJ/GA benefits be restored. See Initial Decision at 5. The ALJ further concluded that the Agency had improperly terminated Petitioner's EA benefits without any notice and directed that the benefits be restored. *Ibid.*

No Exceptions to the Initial Decision were filed.

As the Director of the Division of Family Development, Department of Human Services, I have considered the record in this matter and the ALJ's Initial Decision

Page 2

and having made an independent evaluation of the record, I hereby MODIFY the ALJ's determination as to Petitioner's WFNJ/GA benefits, and I REJECT the ALJ's decision as to Petitioner's EA benefits and REMAND the matter to the Agency for further consideration as to Petitioner's EA benefits.

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). Timely notice is defined as "a notice that is mailed to the recipient at least 10 calendar days before the effective date of the action." N.J.A.C. 10:90-9.1(b)(1). When the Agency's decision adversely affects a benefits recipient, there cannot be a change to the recipient's benefits until 10 calendar days after the mailing date of the notice. N.J.A.C. 10:90-9.1(c).

While I concur with the ALJ that the Agency's notice to Petitioner, Exhibit R-2, was untimely due to the retroactive effective date, I respectfully disagree that the deficient notice requires reversal of the Agency's determination, particularly in light of the fact that the ALJ in this matter considered, and ruled on, the substantive merits for the Agency's action, specifically, if Petitioner, pursuant to regulatory authority, had voluntarily quit his employment. Any conceivable due process concerns in regards to the substantive basis for the Agency's determination have been addressed in the course of this proceeding, as Petitioner was given the chance to appeal the basis for the Agency's action and had the opportunity to be heard. As such, I find that the deficient untimely notice simply needs to be amended to conform with the requirements of the above-cited regulations. Using the later handwritten date on the notice as the date of mailing, see Exhibit R-2 at 2, I find that the notice was not effective until June 9, 2014. Therefore, Petitioner was ineligible for WFNJ/GA benefits from June 9, 2014, to August 9, 2014, and the Agency is directed to effectuate and adjust Petitioner's WFNJ/GA benefits in accordance with these dates.

In regards to the ALJ's determination that there had been a termination of Petitioner's EA benefits, which should be reversed due to a lack of adequate and timely notice, I respectfully disagree with this determination. I note that the only transmitted issue on this appeal was the termination of Petitioner's WFNJ/GA benefits due to a voluntary cessation of employment. Petitioner requested a fair hearing on that Agency action on June 4, 2014. See Initial Decision at 1. I question if the OAL had proper jurisdiction to consider the question of a purported termination of EA during this proceeding. See N.J.A.C. 1:1-3.2(a). It is unclear from the record if the Agency was given proper notice of the alleged claim, with an adequate opportunity to defend its purported actions. Moreover, there is nothing in the record to suggest that the Agency waived this procedural issue. As noted above, Petitioner's request for a hearing on the WFNJ/GA termination was on June 4, 2014, and it appears that any issue regarding the purported EA termination did not surface until the hearing at the OAL on August 7, 2014, when it was asserted that rent was not paid for June, July, or August, and that Petitioner was facing eviction. See Initial Decision at 3, para. 22-24.

Page 3

Additionally, while the record indicates that Petitioner was approved for EA from January 16, 2014, to June 30, 2014, see Initial Decision at 3, para. 11, the record is silent, however, as to whether Petitioner had reapplied for additional EA benefits for the subsequent months.

Based upon the foregoing, I am rejecting the ALJ's determination as to the alleged termination of Petitioner's EA benefits, and remanding this matter to the Agency for further evaluation and handling, taking into consideration the decision made herein as to Petitioner's WFNJ/GA benefits.

Accordingly, the Initial Decision in this matter is MODIFIED which respect to Petitioner's WFNJ/GA benefits. The Initial Decision is hereby REJECTED as to Petitioner's EA benefits and is REMANDED to the Agency for further handling in conformance with this decision.

OCT 29 2014*Signed Copy on File*

at DFD, BARA

Jeanette Page-Hawkins
Director