



State of New Jersey

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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 3278-15 R.H.

AGENCY DKT. NO. C485419 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from Respondent Agency's denial of an extension of Emergency Assistance ("EA") benefits under the Family Violence Option ("FVO") Initiative. The Agency denied Petitioner an extension of EA benefits because she had exhausted her lifetime limit of EA benefits, and did not fit the criteria for the FVO Initiative. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On March 12, 2015, the Honorable Tiffany M. Williams, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On March 13, 2015, the ALJ issued an Initial Decision, which reversed the Agency's action.

Exceptions to the Initial Decision were filed by the Agency on March 18, 2015.

As the Acting Director of the Division of Family Development, Department of Human Services, I have reviewed the ALJ's Initial Decision and the record, and REJECT the ALJ's Initial Decision and AFFIRM the Agency's determination.

The purpose of EA is to meet the emergent needs of public assistance recipients, such as imminent homelessness, so that the recipient can participate in work activities without disruption and continue on a path to self-sufficiency. N.J.A.C. 10:90-6.1(a). In order to maintain eligibility for EA benefits, the recipient must take reasonable steps to resolve his emergent situation. N.J.A.C. 10:90-6.6(a). Reasonable steps include, but are not limited to, the recipient participating in the creation of and complying with a written and signed service plan. *Ibid.* If a recipient fails to comply with the service plan, without good cause, then the recipient's EA must be terminated for a period of six months. *Ibid.*

EA benefits are limited to 12 months, plus limited extensions for "extreme hardship" where the recipient has taken "all reasonable steps to resolve the emergent situation but the emergency nonetheless continues or a new emergency occurs, which causes extreme hardship to the family." N.J.A.C. 10:90-6.4; N.J.S.A. 44:10-51. Specifically, a Work First New Jersey/Temporary Assistance for Needy Families ("WFNJ/TANF") recipient may qualify for an additional six months of EA when an "extreme hardship" exists. *Ibid.* In the event the recipient's extreme hardship continues to exist at the expiration of the six-month extension period, an additional six months of EA may be provided. *Ibid.* Thus, the maximum amount of EA a WFNJ/TANF recipient may receive is 24 months.

Consistent with WFNJ, the FVO Initiative's goal is to transition WFNJ recipients, who are victims of domestic violence, "from dependency on WFNJ [...] cash assistance benefits to employment and self-sufficiency." N.J.A.C. 10:90-20.1(a). The FVO Initiative allows an individual to request EA due to domestic violence, as well as request the waiver of program or time-limit requirements. See N.J.A.C. 10:90-20.1(b), -20.4(a)(7); see also N.J.A.C. 10:90-6.4(f). The FVO Initiative does not authorize the provision of EA benefits indefinitely based on an individual's history of domestic violence. See e.g. DFDI #12-12-05 (expressing FVO "grants 'good cause' temporary waivers of WFNJ program requirements to [WFNJ] applicants/recipients"). Any waiver under the FVO Initiative is based on need as determined by a risk assessment. See N.J.A.C. 10:90-20.2(a)(2)(iv), -20.7, -20.9 and DFDI #12-12-05; see also 45 C.F.R. 260.55. An individual is re-evaluated for their continued need for a waiver at least every six months or sooner depending on an individual's circumstances. See N.J.A.C. 10:90-20.9(c), (c)(1); see also 45 C.F.R. 260.55.

The record indicates that Petitioner had received twenty-eight months of EA benefits, as of December 2, 2014. See Exhibit R-4 at 2.

Here, a brief procedural history is required. Initially, Petitioner applied for an extension of EA benefits on or about December 2, 2014, and was denied by the Agency because she was not in compliance with her service plan ("SP"). *Ibid.* Thereafter, Petitioner requested a fair hearing on the matter which was scheduled for February 17, 2015. See Exhibit R-2; see also Initial Decision at 2. At the time of the February 17th hearing, the presiding ALJ ordered Petitioner be assessed under the FVO Initiative and accepted a withdrawal of that fair hearing from Petitioner, based upon a recent incidence of domestic violence and an eviction notice from her landlord. See Initial Decision at 2; see also Exhibit R-2. Accordingly, on February 23, 2015, Petitioner met with the Agency and completed her domestic violence assessment ("Assessment"). See Exhibit R-1 at 2. As a result of that Assessment, the Agency found that Petitioner did not meet the criteria for the FVO Initiative because she was at low risk for further domestic violence. See Initial Decision at 2; see also Exhibit R-1 at 2, 5-8. Consequently, Petitioner would then be ineligible for

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an extension of EA benefits. On February 26, 2015, the Agency notified Petitioner that she had been denied the FVO and this appeal followed.

Based on the regulation as set out above, Petitioner has already used her lifetime limit of EA benefits, including two six-month extreme hardship extensions. See N.J.A.C. 10:90-6.4. Additionally, Petitioner does not qualify for an extension of EA benefits under the Housing Hardship Extension ("HHE") pilot program because she is not in compliance with her service plan, nor does she qualify for an extension of EA benefits under the Housing Assistance Program ("HAP") pilot because she is employable. See N.J.A.C. 10:90-6.9, -6.10; see also Exhibit R-4 at 2.

Here, I agree with the ALJ's finding that Petitioner was a recent victim of domestic violence ("DV"). With knowledge of this recent incidence of DV, in its FVO report, the Agency indicated that there was "No current safety issues due to DV or sexual assault," Petitioner was identified as being at "LOW RISK" for recurring domestic violence, and hence Petitioner was denied an FVO waiver which would have made her eligible for an extension of EA benefits. See Exhibit R-1 at 6. However, because the Agency did not present a witness that could testify to the meaning of the handwritten words "LOW RISK," the ALJ concluded that the Assessment, on its plain face, indicated a risk of current safety issues, that Petitioner is eligible for the FVO Initiative, and is therefore eligible for an extension of EA benefits.

I respectfully disagree with the ALJ's conclusion. The Assessment is a record that is made in the regular course of business and it is the regular practice of the Agency to make such a record. As such, I find that the Assessment constitutes a business record, which is a hearsay exception and not dependent upon the declarant's availability. See New Jersey Evidence R. 803(c)(6). Specifically, I find that the Assessment, on its plain face, established that there were "no current safety issues due to DV or sexual assault," as checked off on the form, and that Petitioner is not at risk of further DV if she is denied a waiver of the EA time limit, as checked off on the form. See Exhibit R-1 at 6. Therefore, in accordance with the Assessment, I find that Petitioner does not qualify for the FVO Initiative and the Agency properly denied Petitioner an extension of EA benefits.

Accordingly, the Initial Decision is REJECTED and the Agency's action is AFFIRMED.

Signed Copy on File
at DFD, BARA

Natasha Johnson
Acting Director