



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 12068-15 S.S.

AGENCY DKT. NO. C283106 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from the Respondent Agency's termination of her Work First New Jersey/Temporary Assistance for Needy Families ("WFNJ/TANF") benefits because she incurred a sanction for non-compliance with the work activity requirement. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On August 20, 2015, the Honorable Kelly J. Kirk, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On August 21, 2015, the ALJ issued an Initial Decision reversing the Agency determination.

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 for this matter and the ALJ's Initial Decision and, having made an independent evaluation of the record, I hereby REJECT the ALJ's Initial Decision and AFFIRM the Agency's determination.

In order to maintain eligibility for receipt of WFNJ benefits, the recipient must cooperate with and participate in the WFNJ work activity requirements. See N.J.A.C. 10:90-2.2(a)(2). If a WFNJ recipient fails to comply with their work activity without good cause, the recipient is subject to a sanction resulting in a pro-rata reduction of WFNJ benefits for the first month. See N.J.A.C. 10:90-4.13(b). Thereafter, if the recipient is still non-compliant, without good cause, their WFNJ benefits will be suspended for one month. See N.J.A.C. 10:90-4.13(b)(1). If the

non-compliance continues, the recipient's case will close the month following the suspension of their WFNJ benefits. See N.J.A.C. 10:90-4.13(b)(2).

At the hearing, the Fair Hearing Liaison produced the Agency's case notes on Petitioner's file, which the ALJ determined to be hearsay. See Initial Decision at 2; see also Exhibit R-1. However, I disagree with the ALJ's conclusion that, because an Agency case worker failed to appear at the hearing, the case notes constitute hearsay and should be "afforded zero weight." See Initial Decision at 2. Rather, the case notes are a business record made by the Agency in the ordinary course of business, and it is the regular practice of the Agency to make such notes. Moreover, the entries set forth therein are made contemporaneously with their occurrence. As such, I find that the case notes fall within the exceptions to the hearsay rule, and are not dependent upon the declarant's availability. See N.J. Evidence R. 803(c)(6).

Based upon the pro-rata reduction of Petitioner's WFNJ/TANF benefits in May 2015, it is clear that a sanction was imposed against Petitioner on that date. See Exhibit R-1 at 4. Although the record does not reflect exactly when the Agency first sent Petitioner its computer-generated sanction notice, Petitioner certainly had constructive notice of the sanction when her benefits were reduced on May 1, 2015. *Ibid.* Thereafter, Petitioner's cash benefits were suspended in June 2015, and her case was closed in July 2015. See Exhibit R-1 at 2. Pursuant to the WFNJ regulations, Petitioner had 90 days from May 1, 2015, to appeal the sanction, but she failed to do so. See N.J.A.C. 10:90-9.10(a).

Further, I find unpersuasive Petitioner's assertion that, because the Agency had an incorrect telephone number for her, she did not know she had incurred a sanction. See Initial Decision at 2-3. Moreover, I note that Petitioner does not assert that the Agency had her incorrect address, and there is no indication in the record that the address to which Petitioner's sanction notice was mailed was incorrect. In addition, the Agency did not receive any notices sent to Petitioner returned from the post office as "undeliverable." Rather, I find that Petitioner knew that her WFNJ/TANF benefits had been reduced on May 1, 2015, and that her benefits had been suspended in June 2015, because the Agency's case notes reveal that Petitioner came into the Agency's office for a "sanction orientation" on June 18, 2015. See Exhibit R-1 at 2. On that date, Petitioner stated that she would return to the WFNJ work activity unit, and Petitioner was given a Med-1 form regarding her child. See Exhibit R-1 at 2.

Based on the totality of the circumstances, I find that Petitioner had constructive notice of the sanction at the time her benefits were reduced in May 2015. Because it is clear that Petitioner did not appeal the sanction within the permitted 90-day time frame, any argument by Petitioner that the sanction should be lifted or rescinded is untimely and improper. On that basis, I reject the ALJ's Initial Decision and find that the Agency's action was appropriate and must stand.

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

Signed Copy on File
at DFD, BARA

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Natasha Johnson
Director