



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 5831-14 T.T.

AGENCY DKT. NO. C047984 (CAPE MAY COUNTY BD. OF SOC. SVCS.)

Petitioner appeals from Respondent Agency's denial of her application for Emergency Assistance ("EA") benefits. The Agency denied Petitioner's application due to its assertion that Petitioner had the realistic capacity to plan for her housing emergency. The Agency also retroactively imposed a six month period of ineligibility for receipt of EA benefits upon Petitioner. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On June 19, 2014, the Honorable Damon G. Tyner, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents into evidence.

On June 27, 2014, the ALJ issued his Initial Decision, which reversed the Respondent Agency's denial of EA benefits. The ALJ found Petitioner's testimony credible that she had done everything she could have to avoid losing her home, including seeking help from the Agency, but Petitioner was told that the Agency did not assist with mortgage payments. See Initial Decision at 3. The ALJ further noted that Petitioner had returned to the Agency when she had procured new affordable permanent housing for assistance. Ibid. The ALJ concluded that Petitioner and her children were imminently homeless with little income and Petitioner was therefore eligible for EA. Ibid.

Exceptions to the Initial Decision from the Agency, dated June 27, 2014, were received on July 7, 2014. The Exceptions include documents not entered into evidence before the ALJ, in contravention of N.J.A.C. 1:1-18.4(c) ("Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions."). The Exceptions take issue with the

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ALJ's finding of Petitioner's statement, that she sought help with her mortgage payments, as credible since the Agency had no record of an application ever submitted. See Exceptions at 1. The Exceptions also note that Petitioner is no longer receiving Work First New Jersey/Temporary Assistance for Needy Families ("WFNJ/TANF") benefits, which are a necessary predicate for receipt of EA benefits. *Ibid.*

As the Director of the Division of Family Development, Department of Human Services, I have considered the ALJ's Initial Decision, and having made an independent evaluation of the record, I concur with the ALJ's determination and hereby ADOPT the Initial Decision, reversing the Agency's decision in this matter. However, I am also remanding this matter back to the Agency for further evaluation given the question of Petitioner's WFNJ/TANF eligibility at this point in time.

The Initial Decision in this matter states that Petitioner is appealing the Agency's denial of EA benefits. However, I do note that the record indicates that the Agency was, in fact, paying for temporary housing at a hotel/motel from January to at least April 3, 2014. See Exhibit R-1 at 37 (indicating a "pay type" code of 40, which denotes payment for a hotel/motel); see *id.* at 12 (indicating auditor's determination to "terminate" EA case). This leads then to the conclusion that the Agency denied Petitioner's request for Temporary Rental Assistance ("TRA"), which seems to be correct, except for the fact that in January 2014, in its Adverse Action letter, the Agency states, "We may be able to assist with permenate [sic] housing if you submit a lease in the fair market rent for Cape May County." See *id.* at 40. Petitioner then returns in April, having located an affordable apartment, then to be denied again, with the Agency imposing a retroactive six month period of ineligibility back to January 2014, and noting that Petitioner is denied EA/FEMA Assistance benefits. See *id.* at 8. Petitioner then filed a timely appeal.

I concur with the ALJ's findings that Petitioner, at the time she reapplied for EA in April, 2014, was eligible for receipt of EA benefits. I further find that the imposition of the retroactive six month period of ineligibility, four months after the fact, was improper, as it does not comport with the regulatory requirement of timely notice. See N.J.A.C. 10:90-9.1(b). However, as that six month period of ineligibility has now passed, that issue is now moot.

While I agree with the ALJ's conclusion in this matter, I am remanding this matter back to the Agency in light of issues referenced in the Exceptions. It appears that Petitioner's WFNJ/TANF case was closed. What is not clear, however, is if the case was closed as a result of a sanction of either Petitioner or her boyfriend, or another reason. If the case was closed due to a sanction, EA would be continued through the one month closure period of the sanction. See N.J.A.C. 10:90-4.13(e).

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The Exceptions also allude to earned income. If Petitioner's WFNJ/TANF case was closed for this reason, it is not clear if income disregards were applied, in accordance with our regulations. See N.J.A.C. 10:90-3.8.

Accordingly, the Initial Decision is ADOPTED and the Agency determination is REVERSED and REMANDED back to the Agency for further evaluation and determination.

Signed Copy on File
at DFD, BARA

AUG 19 2014

Jeanette Page-Hawkins
Director