



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

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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 7361-14 V.N.

AGENCY DKT. NO. GA367558 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from Respondent Agency's denial of Emergency Assistance ("EA") benefits. The Agency denied Petitioner EA benefits because she had the capacity to plan for substitute housing. Because the Petitioner appealed, this matter was transmitted to the Office of Administrative Law for a hearing. On July 2, 2014, the Honorable Laura Sanders, Acting Director and Chief Administrative Law Judge ("CALJ"), held a hearing, took testimony and admitted documents. On July 3, 2014, the CALJ issued an Initial Decision. The CALJ found Petitioner's circumstances were beyond her control because of a prior alleged sexual assault. The CALJ further found Petitioner's current rent exceeds the fair market rent ("FMR"). The CALJ reversed the denial of EA based on a failure to plan, but affirmed the Agency's denial of EA for Petitioner's apartment because the rent with utilities exceeds the allowable FMR.

No exceptions to the Initial Decision were received.

As the Director of the Division of Family Development, Department of Human Services, I have reviewed the record for this matter and the CALJ's Initial Decision, and I AFFIRM and MODIFY the Initial Decision. I agree with the CALJ that the Agency properly denied Petitioner EA because her apartment exceeds the FMR. However, I modify the Initial Decision in that I agree with the Agency that Petitioner is ineligible for EA because she had sufficient opportunity to plan for alternate housing and thus, any emergency is within her control. Thus, Petitioner is ineligible for EA because she had the realistic capacity to plan to avoid any emergency and her current apartment exceeds the allowable FMR for Essex County.

According to the record, in 2012, Petitioner moved from Newark to Caldwell because of domestic violence and an alleged sexual assault by an unidentified male. See Exhibit R-2, EA Application. Since August 2012, Petitioner has resided in the same apartment in Caldwell. See Exhibit R-6, Lease, dated July 31, 2012, and Lease, dated July 1, 2013; see also Exhibit R-2, EA Application (indicating resided at apartment for 1 year and 10 months). During that time, Petitioner's family has assisted her in paying her rent, which was \$1,050 per month and \$1,080 per month under the respective yearly lease terms. See Exhibit R-6, Lease, dated July 31, 2012 and Lease, dated July 1, 2013; Exhibit R-3, Agency Notice, dated May 19, 2014; Exhibit R-4, Letter from Petitioner. In May 2014, Petitioner applied for EA because she could not afford the \$1,080 rent on her apartment. See Exhibit R-2, EA Application and Exhibit R-1, Lease, dated July 1, 2013. In June 2014, Petitioner renewed her lease in the amount of \$1,059 per month. At the time of her EA application, Petitioner received \$210 per month in Work First New Jersey/General Assistance benefits. Subsequently, Petitioner was approved for Supplemental Security Income ("SSI") in the amount of \$752.25 per month beginning in July 2014. See Exhibit P-1, Letter from Social Security Administration.

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 be eligible for EA benefits, N.J.A.C. 10:90-6.1(c) provides, in relevant 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 in advance for substitute housing." Also, when the recipient causes her own homelessness, she is ineligible for EA. N.J.A.C. 10:90-6.1(c)(3).

Here, from the record it appears the incidents that precipitated Petitioner's need to move from Newark to Caldwell occurred prior to her August 2012 move. Hence, when Petitioner applied for EA benefits in May 2014, she had been residing in her Caldwell apartment since August 1, 2012. During that time, Petitioner has relied primarily upon family to pay her rent. Despite her reliance on family to pay her rent and limited income, the record is devoid of any efforts made by Petitioner to locate more affordable housing over the past two years. It is also questionable as to why Petitioner entered into a new lease for an apartment that was unaffordable, remains unaffordable and is not anticipated to become affordable. See N.J.A.C. 10:90-6.3(a)6 (allowing TRA "in order to maintain current permanent housing which had previously been affordable but which is no longer affordable . . . and it is anticipated that such housing will again become affordable.") In all, Petitioner's plan for housing is premised upon her receipt of EA to pay her rent. Therefore, I find that Petitioner is ineligible for EA because she had the realistic capacity to plan and

sufficient time over the past two years to avoid any emergency or homelessness by locating more affordable housing. N.J.A.C. 10:90-6.1(c)1i. Because she had the realistic capacity to plan to avoid her emergency, Petitioner is ineligible for EA for a period of six months beginning on the date that the Petitioner's application for EA was denied. N.J.A.C. 10:90-6.1(c)3 and DFDI 08-05-04.

Moreover, although Petitioner has received a notice from her landlord seeking overdue rent in the amount of \$1,648, there is no pending eviction proceeding in this matter. Thus, Petitioner is not eligible for EA because she is not homeless or imminently homeless. See N.J.A.C. 10:90-6.1(c).

Further, Petitioner's current rent remains above FMR because it does not include utilities. The FMR for a one-bedroom apartment in Essex County is \$1,059. Petitioner's new lease, which reduced her prior rent of \$1,080 to \$1,059 to apparently match the FMR maximum limit, does not include utilities in the rent. See also N.J.A.C. 10:90-6.1(c)3i (disqualifying from EA eligibility where individual makes herself eligible for EA). As such, I agree with the CALJ that the Agency properly denied Petitioner EA for her current apartment because Petitioner's rent of \$1,059 plus utilities exceeds the allowable FMR. See N.J.A.C. 10:90-6.3(a)7 (limiting TRA to "when the total cost of housing inclusive of basic utilities is equal to or below the current [FMR], . . .").

By way of comment, the Agency shall refer Petitioner to any and all agencies that may be able to assist with her current needs. Finally, Petitioner should locate more permanent affordable housing based upon her new monthly SSI of \$752.25. Of course, Petitioner may re-apply for EA benefits once she locates more permanent affordable housing and the six month penalty has expired. However, her SSI will be considered in any evaluation as to her EA financial eligibility. See e.g. N.J.A.C. 10:90-6.1(c)(2), -6.1(a)(i) and -6.5(a).

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

AUG 25 2014

Signed Copy on File
at DFD, BARA

Jeanette Page-Hawkins
Director