



*State of New Jersey*

**DEPARTMENT OF HUMAN SERVICES**

Division of Family Development  
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Elizabeth Connolly  
*Acting Commissioner*

Natasha Johnson  
*Director*

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 4349-15 W.J.

AGENCY DKT. NO. C137950 (ESSEX COUNTY DIVISION OF WELFARE)

This matter comes before me as a result of the remand of the original case back to the Respondent Agency for further evaluation. A procedural history is in order.

Petitioner originally appealed the Agency's denial of Emergency Assistance ("EA") benefits because Petitioner's cost of housing exceeded the fair market rent ("FMR") for Essex County. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law ("OAL") for a hearing. On January 22, 2015, the Honorable Kimberly A. Moss, Administrative Law Judge, held an emergent plenary hearing, took testimony, and admitted documents into evidence. On January 22, 2015, Judge Moss issued an Initial Decision which affirmed the Agency determination. Thereafter, on January 30, 2015, Exceptions were filed by Legal Services on behalf of Petitioner. Specifically, those Exceptions included documents needed to be considered by the Agency regarding the FMR issue and Petitioner's EA eligibility.

On February 12, 2015, this office issued a Final Agency Decision in the original matter. Having found that the Agency properly denied Petitioner EA benefits, at the time of his application, I nevertheless remanded the matter back to the Agency to reevaluate Petitioner's EA eligibility based on new facts and documents provided in Petitioner's Exceptions. See Exhibit R-1 at 2. Specifically, facts that indicated Petitioner's landlord was willing to accept the FMR amount as payment for

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Petitioner's back rent due, as well as for his monthly rental amount going forward. See *id.* at 9. At the time this matter was remanded back to the Agency, Petitioner was three months behind in his rent. See Exhibit P-3. On remand, the Agency again denied Petitioner EA benefits because, purportedly, Petitioner was five months behind on his rent, in contravention of what was allowable pursuant to N.J.A.C. 10:90-6.3(a)(5), and unable to show how arrears would be paid. See Initial Decision at 2.

Petitioner then appealed that determination and an emergent plenary hearing was heard on April 6, 2015, before the Honorable Michael Antoniewicz, Administrative Law Judge ("ALJ"). The ALJ took testimony and admitted documents into evidence. On April 7, 2015, the ALJ issued an Initial Decision which affirmed the Agency's denial of Petitioner's request for EA benefits.

No Exceptions to the Initial Decision were received.

As the Director of the Division of Family Development ("DFD"), Department of Human Services, I have considered the record in this matter and the ALJ's Initial Decision, and having made an independent evaluation of the record, I hereby REJECT the Initial Decision and REVERSE the Agency determination.

N.J.A.C. 10:90-6.3(a)(7) states in pertinent part, "The Agency may authorize [Temporary Rental Assistance] TRA when the total cost of housing inclusive of basic utilities is equal to or below the current Fair Market Rent (FMR) .... Amounts in excess of the current FMR will require prior approval and authorization of subsidy level by DFD."

N.J.A.C. 10:90-6.3(a)(5) provides, in pertinent part, that payment shall be authorized up to any three calendar months of retroactive rental payments if it will prevent actual eviction or foreclosure. Payment for more than three calendar months of retroactive rental payments shall be made only under extraordinary circumstances subject to authorization by DFD. *Ibid.*

In regards to Petitioner's eligibility for EA benefits, the Agency's prior denial of Petitioner's application for EA benefits was based on Petitioner's cost of housing exceeding the FMR for Essex County. See Exhibit R-1. However, I find that upon remand, Petitioner provided the Agency with a letter from his landlord indicating that as of March 16, 2015, he was four months behind on his rent and his monthly rental payments are \$1,269 per month, which comports with the FMR for Essex County. See Exhibit P-3; see also DFD Instruction No. 14-01-01.

With respect to Petitioner now being five months behind in his rent, I find that because he was only three months behind in his rent when this matter was remanded back to the Agency, that the Agency cannot, now, deny him EA benefits because he is more than three months behind in his rent. See Initial Decision at 2. Therefore, the Agency is directed to pay Petitioner's five months of back rent, contingent upon Petitioner providing the Agency with his current lease indicating that his rent includes utilities, and is equal to, or less than, the FMR for Essex County. See N.J.A.C. 10:90-6.3(a)(7). Further, the Agency is directed to pay Petitioner's prospective rent, provided he continues to need EA benefits, and is otherwise eligible for EA pursuant to N.J.A.C. 10:90-6.1.

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

**APR 24 2015**

*Signed Copy on File*  
at DFD, BARA

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Natasha Johnson  
Director