



State of New Jersey

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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

REMAND DECISION

OAL DKT. NO. HPW 09254-18 C.C.

AGENCY DKT. NO. C038787011 (MERCER COUNTY BOARD OF SOC. SVCS..)

Petitioner appeals from the Respondent Agency's termination of Emergency Assistance ("EA") benefits. The Agency terminated Petitioner's EA benefits contending that she failed to comply with her EA service plan ("SP"). Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On July 31, 2018, the Honorable Jeffrey N. Rabin, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On August 2, 2018, the ALJ issued an Initial Decision, affirming the Agency's determination.

Exceptions to the Initial Decision were filed by Petitioner on August 6, 2018, and August 8, 2018.

As the Director of the Division of Family Development, Department of Human Services, I have reviewed the ALJ's Initial Decision and the record, and I hereby ADOPT the ALJ's Initial Decision, AFFIRM the Agency's determination, and REMAND the matter to the Agency, based on the discussion below.

Here, the record reflects that on May 1, 2018, Petitioner applied, and was approved for EA benefits in the form of shelter placement. See Initial Decision at 2. On that same date, Petitioner executed a shelter agreement wherein she agreed, among other things, to notify staff of any prescription medication and to adhere to the shelter's curfew. *Id.* at 2-3; see also Exhibit R-2 at 1-3. Also on May 1, 2018, Petitioner agreed to submit to a drug analysis and she tested positive for Benzodiazepines. See Initial Decision at 3; see also R-2 at 13. However, even after Petitioner had been advised that shelter rules require that all medication must be turned over to the shelter and documented, she did not surrender any medication to the shelter. See Initial Decision at 3; see also Exhibit R-2 at 1, 8, 12, 13. Petitioner was issued three citations for missing curfew on May 1, 2, and 4, 2018. See Initial Decision at 3; see also Exhibit R-2 at 4, 5. On May 10, 2018, Petitioner executed an SP with the Agency, wherein she agreed, among other things, to cooperate with the rules of EA placement. See Initial Decision at 3; see also Exhibit R-1 at 6-8. On May 23, 2018, Petitioner was issued a fourth citation for missing curfew. See Initial Decision at 3; see also Exhibit R-2 at 6.

As a result of Petitioner's four citations for missing curfew, and Petitioner not turning over her medication to shelter staff as required, on May 29, 2018, she executed a 30-day Family Preservation Contract ("FPC Contract") wherein she agreed again, among other things, to comply with curfew requirements, and acknowledged that medications were not allowed in her room. See Initial Decision at 3-4; see also Exhibit R-2 at 12. On June 20, 2018, Petitioner was cited for missing curfew on June 14, 2018. See Initial Decision at 4; see also Exhibit R-2 at 7. On June 21, 2018, while a resident at the shelter, Petitioner tested positive again for medication, which she did not disclose and surrender to the shelter, as required. See Initial Decision at 4; see also Exhibit R-2 at 17. On June 22, 2018, the Agency terminated Petitioner's EA benefits, effective July 1, 2018, for not following the rules of shelter, and failing to comply with her SP. See Initial Decision at 4; see also Exhibit R-1 at 1-5, and N.J.A.C. 10:90-6.6(a).



The ALJ found that, despite agreeing to comply with shelter rules by way of an SP and FPC Contract, Petitioner twice failed to turn over her medication to the shelter staff, and missed curfew on five separate occasions. See Initial Decision at 5. Based on the foregoing, the ALJ concluded that Petitioner failed to comply with the shelter rules, thus constituting a violation of her SP. See Initial Decision at 5. The ALJ further concluded that the Agency's termination of Petitioner's EA benefits was proper and must stand. See Initial Decision at 5; see also Exhibit R-1 at 1-5, and N.J.A.C. 10:90-6.6(a). I agree.

However, it appears from the record that Petitioner may have substance abuse and/or behavioral health issues which would have required the Agency to refer Petitioner for a Substance Abuse Initiative/Behavioral Health Initiative ("SAI/BHI") assessment. See Initial Decision at 3-4. Pursuant to regulatory authority, when an individual presents with barriers which may limit their ability to comply with EA benefits requirements, they are to be referred for appropriate services/treatment, and any required treatment is to be incorporated into the individual's SP. See N.J.A.C. 10:90-6.1(c)(1)(iii), -6.6(a)(1)(iii) (7). However, the record clearly reflects that Petitioner's SP does not require her to participate in an SAI/BHI evaluation or treatment. See Exhibit R-1 at 6-8. Therefore, I am remanding the matter to the Agency to refer Petitioner for an SAI/BHI evaluation to determine whether she lacks the functional capacity to plan and avoid homelessness. See N.J.A.C. 10:90-6.1(c)(1)(iii). Based on the foregoing, and in accordance with N.J.A.C. 10:90-6.1(c)(3), should Petitioner be found to have substance abuse and/or mental health issues indicating that she lacked the functional capacity to avoid behavior that contributed to her becoming homeless, I find that a six-month EA ineligibility penalty shall not be imposed upon Petitioner, and that Petitioner is then without prejudice to reapply for EA benefits. See also N.J.A.C. 10:90-6.3(c), (e) and -6.6(a). Should, however, the SAI/BHI assessment determine that Petitioner does not lack the functional capacity to plan and avoid homelessness, then Petitioner is subject to a six-month period of ineligibility for EA benefits. See N.J.A.C. 10:90-6.3(c), (e) and -6.6(a). Further, because Petitioner has been receiving continued assistance pending the outcome of this hearing, the six-month EA ineligibility penalty, should it be imposed, will begin to run as of the date of the issuance of this Final Agency Decision.

Accordingly, the Initial Decision is hereby ADOPTED, the Agency's determination is AFFIRMED, and the matter is REMANDED to the Agency to refer Petitioner for an SAI/BHI assessment, on an expedited basis, as discussed above.

Officially approved final version.

SEP 13 2018

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Natasha Johnson  
Director

