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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

FINAL DECISION

OAL DKT. NO. HPW 12239-18 M.D.

AGENCY DKT. NO. C696108007 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from the Respondent Agency's termination of Emergency Assistance ("EA") benefits, and the imposition of six-month period of ineligibility for EA benefits. The Agency terminated Petitioner's EA benefits, and imposed a six-month EA ineligibility penalty, contending that she was terminated from shelter placement due to her engagement in a violent act, thereby causing her own homelessness. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On September 11, 2018, the Honorable Ernest M. Bongiovanni, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On September 12, 2018, the ALJ issued an Initial Decision, reversing the Agency's determination.

Exceptions to the Initial Decision were filed by the Agency on September 18, 2018.

As the Director of the Division of Family Development ("DFD"), Department of Human Services, I have reviewed the ALJ's Initial Decision and the record, and I hereby MODIFY the ALJ's Initial Decision, and REVERSE the Agency's determination, as discussed below.

When a WFNJ applicant/recipient has an open case with the Division of Child Protection & Permanency ("DCP&P"), he/she may be eligible for EA benefits even though he/she has been found to have caused his/her own homelessness. See Exhibits R-12, R-16; see also N.J.A.C. 10:90-6.1(c)(6) (stating that "[i]n consultation with [DCP&P], EA benefits shall be provided to a [DCP&P] family, even if the family caused its own homelessness, provided that the family meets all other EA eligibility requirements"). In order for Petitioner to be eligible for EA benefits, DCP&P must agree to consult with the Agency and coordinate a DCP&P plan, along with the Agency's SP and Individual Responsibility Plan ("IRP"). See N.J.A.C. 10:90-6.1(c)(6)(i); see also DFD Instruction ("DFDI") 05-12-03 at 5.

Here, the record reflects that the Agency terminated Petitioner's EA benefits contending that Petitioner caused her own homelessness when she was terminated from her shelter placement due to her engagement in a violent act, which resulted in the police being called, and Petitioner's arrest. See Initial Decision at 2; see also Exhibit R-3 at 1-4, 7-11, and N.J.A.C. 10:90-6.1(c)(3) (vi), -6.3(c)(3). The basis for the Agency's termination of Petitioner's EA benefits was a shelter Incident Report. See Initial Decision at 2-3; see also Exhibit R-2. However, no one from the shelter was present at the hearing to attest to the truth of the claims made in the Incident Report, and no police report was provided. See Initial Decision at 3-4. The ALJ found that the shelter Incident Report was hearsay within the dictates of the Residuum Rule, unsupported by competent evidence in the record, and as such, the ALJ concluded that the Agency failed to meet its burden of proof to show, by a preponderance of the evidence, that Petitioner actually committed the violent act which resulted in her termination from the shelter. *Ibid.*; see also N.J.A.C. 1:1-15.5. Based on the foregoing, the ALJ concluded that the Agency's termination of Petitioner's EA benefits, and the imposition of a six-month EA ineligibility penalty, were



improper and must be reversed. See Initial Decision at 4; see also Exhibit R-3 at 1-4, 7-11, and N.J.A.C. 1:1-15.5. I agree.

The ALJ also found that, even if Petitioner had caused her own homelessness, because Petitioner has an open case with DCP&P, she would be eligible for EA benefits in accordance with N.J.A.C. 10:90-6.1(c)(6). See Initial Decision at 2, 4; see also Exhibit P-1. I respectfully disagree. Rather, I find that Petitioner may have been eligible for EA benefits in accordance with N.J.A.C. 10:90-6.1(c)(6), if, and only if, DCP&P had agreed to consult with the Agency and to coordinate a DCP&P plan, along with the Agency's SP and Individual Responsibility Plan ("IRP"). See DFD Instruction ("DFDI") 05-12-03 at 5. The Initial Decision is modified to reflect this finding.

By way of comment, for clarification, a six-month EA ineligibility penalty is not considered a sanction. Particularly, a sanction is generally imposed for failure to comply with a Work First New Jersey ("WFNJ") work activity, and can be cured once a WFNJ benefits recipient comes into compliance. See N.J.A.C. 10:90-4.13. A penalty, or period of ineligibility, however, such as a six-month EA ineligibility penalty or other penalties imposed in the WFNJ regulations, cannot be cured. See N.J.A.C. 10:90-1.15 (imposing upon applicants for WFNJ benefits a 90 day period of ineligibility due to a voluntary cessation of employment), -4.14 (imposing upon WFNJ benefits recipients, a two month period of ineligibility for voluntarily ceasing employment), -6.1(c)(3) (imposing a six month period of ineligibility for EA benefits for various reasons), -6.3(c) (imposing a six month period of ineligibility for EA benefits due to termination from housing placements, without good cause), -6.6(a) (imposing a six month period of ineligibility for EA benefits for failure to comply with one's service plan).

By way of further comment, Petitioner is advised that any future shelter rule violations may result in the termination of EA benefits, and the imposition of a six-month EA ineligibility penalty. See N.J.A.C. 10:90-6.1(c)(3), -6.3(c), (e).

Also by way of comment, as the record indicates that Petitioner has an open case with DCP&P, a copy of the Initial and Final Decisions in this matter shall be forwarded to DCP&P. See Exhibit P-1.

Finally, by way of comment, I have reviewed the Agency's Exceptions and find that the arguments made therein do not alter my decision in this matter.

Accordingly, the Initial Decision is hereby MODIFIED, and the Agency's determination is REVERSED, as outlined above.

Officially approved final version. **SEP 21 2018**

Natasha Johnson
Director

