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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 10845-18 M.W.

AGENCY DKT. NO. C706402007 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from the Respondent Agency's denial of Petitioner's application for Emergency Assistance ("EA") benefits in the form of Temporary Rental Assistance ("TRA"). The Agency denied Petitioner's application for EA/TRA benefits contending that her apartment was above fair market rent ("FMR"). Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law ("OAL") for a hearing. On August 3, 2018, the Honorable Gail M. Cookson, Administrative Law Judge ("ALJ"), issued an Initial Decision, reversing the Agency's determination.

Exceptions to the Initial Decision were filed by the Agency on August 6, 2018.

As the Director of the Division of Family Development ("DFD"), Department of Human Services, I have reviewed the ALJ's Initial Decision and filed Exceptions, and having made an independent evaluation of the record, I hereby REJECT the ALJ's Initial Decision, and REMAND the matter to the OAL for an emergent hearing for further fact finding.

Here, the ALJ reversed the Agency's denial of EA/TRA benefits to Petitioner and directed the Agency to provide Petitioner with two months of back rent, without convening a formal hearing and going on the record. See Initial Decision at 4; see also Exceptions. The ALJ made findings of fact and conclusions of law without evidentiary support, and without sworn testimony from Petitioner or an Agency representative. See Exceptions. For example, Petitioner offered no evidence to support that she was promised full-time employment, in the form of an offer letter, or that she is currently employed full-time, such as recent paystubs. In addition, the record is devoid of any letters, affidavits or certifications from Petitioner's children detailing the amount of financial support they provide, or will provide, to Petitioner, and whether that support is sufficient for Petitioner to pay her rent going forward.

While the ALJ states that Petitioner resides in a three-bedroom apartment, the Agency only considered Petitioner's eligibility for a two-bedroom apartment, and denied EA benefits to Petitioner because her monthly housing costs exceed the FMR for a two-bedroom apartment in Essex County. See Exceptions; see also N.J.A.C. 10:90-6.3(a)(7), and DFD Instruction 17-09-05. As no testimony or documentary evidence was entered into evidence, such as the Agency's adverse action notice, it is unclear why the



Agency applied the FMR for a two-bedroom apartment. I find that questions remain in this matter for which there is no record.

Finally, I note the importance of developing a record so that it may be reviewed before issuing a Final Agency Decision. See N.J.A.C. 1:1-18.6(b). Moreover, the parties in a contested case have the right to present their respective cases on the record before an independent fact finder, the ALJ, at a plenary hearing. Regulatory authority necessitates a verbatim recording of proceedings, and further, that "all discussions off the record, no matter how brief, except settlement negotiations and mediations, shall be summarized for the record." See N.J.A.C. 1:1-14.1(a). A clear and accurate record of a plenary hearing below is also necessary in the event either party decides to appeal a Final Agency Decision to the Superior Court of New Jersey, Appellate Division. For an ALJ to not convene a plenary hearing, so that a case could be presented on the record, prior to the issuance of an Initial Decision, is concerning.

Based upon the foregoing, the Initial Decision is REJECTED, and the matter is REMANDED to the OAL for rehearing, as discussed above, on an expedited basis.

Officially approved final version.

AUG 17 2018

Natasha Johnson
Director

