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Assistant Commissioner

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

AMENDED DECISION

OAL DKT. NO. HPW 10254-19 C.L.

AGENCY DKT. NO. C035742005 (CAPE MAY COUNTY BD. OF SOC. SVCS.)

A Final Agency Decision ("FAD") was issued in this matter on November 1, 2019. This Amended FAD is being issued to recognize receipt of Exceptions filed by counsel for the Agency, on November 6, 2019, and a reply to Exceptions was filed by counsel to Petitioner on November 12, 2019.

Petitioner appeals from the Respondent Agency's termination of Work First New Jersey/General Assistance ("WFNJ/GA") and Supplemental Nutrition Assistance Program ("SNAP") benefits. The Agency terminated Petitioner's WFNJ/GA benefits, contending that he had exhausted his lifetime limit of said benefits, and terminated Petitioner's SNAP benefits, contending that he failed to comply with the mandatory work activity. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. A hearing was initially scheduled for August 29, 2019, but was adjourned to allow Petitioner the opportunity to obtain counsel. On October 10, 2019, the Honorable Kathleen M. Calemno, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On October 24, 2019, the ALJ issued an Initial Decision, reversing the Agency's determination.

Exceptions to the Initial Decision were filed by counsel for the Agency on November 6, 2019, and a reply to Exceptions was filed by counsel to Petitioner on November 12, 2019.

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, based on the discussion below.

Here, the record reflects that Petitioner had received 84 months of WFNJ cash benefits, and as such, Petitioner had exhausted his WFNJ/GA benefits. See Initial Decision at 4. Consequently, the Agency terminated Petitioner's WFNJ/GA benefits, and it appears from the record that the Agency had determined that Petitioner did not qualify for an exemption from said time limit. See Initial Decision at 3-4; see also Exhibit R-1 at 28-32, and N.J.A.C. 10:90-2.3(a)(1), -2.4, -2.20. However, based on Petitioner's personal and work history, specifically, his age, his mental health issues, his prior years of incarceration, and the fact that he had not been employable, or employed, in the last five years, the ALJ found that Petitioner was "chronically unemployable," and therefore, exempt from the WFNJ



benefits time limit. See Initial Decision at 2-3, 7-8; see also Exhibit P-D, and N.J.A.C. 10:90-2.4(a)(4)(ii) (2)(E). On that basis, the ALJ concluded that Petitioner is eligible for WFNJ/GA benefits, and reversed the Agency's termination of said benefits. See Initial Decision at 10; see also Exhibit R-1 at 28-32. I agree. Of note, a 12-month MED-1 form is not required in determining chronic un-employability. See N.J.A.C. 10:90-2.4(a)(4).

The ALJ also found that Petitioner had a valid 12-month MED-1 form which also exempted him from the WFNJ/GA benefits time limit. See Initial Decision at 8-10; see also N.J.A.C. 10:90-2.4(a)(3). However, the ALJ's determination in this regard is misplaced, as it was based on Petitioner's MED-1 form dated May 29, 2019, as well as Petitioner's past MED-1 form history. See Initial Decision at 8-10; see also Exhibits P-A, P-B. Rather, the record reflects that Petitioner's same physician submitted an updated MED-1 form on June 26, 2019, which clearly indicates that Petitioner can engage in "gainful employment and/or occupational training," and I find that the June 26, 2019, MED-1 form is controlling here and not subject to challenge. See Initial Decision at 4; see also Exhibits P-C, R-1 at 16. Moreover, the ALJ opined that a physician's diagnosis, and I add, the conclusions drawn from such diagnosis, are not to be challenged. See Initial Decision at 9-10; see also DFD Instruction No. 15-01-04. Therefore, based on Petitioner's updated MED-1 form, I find that Petitioner does not qualify for an exemption from the WFNJ benefits time limit based on a permanent disability. See N.J.A.C. 10:90-2.5(a)(3). The Initial Decision is modified to reflect this finding.

Further, the record reflects that Petitioner's SNAP benefits were terminated because he failed to comply with the mandatory SNAP work requirement. See Initial Decision at 1-2; see also Exhibit R-1 at 20, 22-26, and N.J.A.C. 10:87-10.4, -10.15, -10.16, -10.18, and -10.19. However, the ALJ found that, as Petitioner was exempt from the WFNJ benefits time limit, due to being determined "chronically unemployable," he was therefore also exempt from the mandatory SNAP work requirement. See Initial Decision at 10. Accordingly, the ALJ concluded that Petitioner was eligible for SNAP benefits, and reversed the Agency's termination of Petitioner's SNAP benefits. *Ibid.*; see also Exhibit R-1 at 22-26. I agree. See N.J.A.C. 10:87-10.18(a), (b).

By way of comment, in accordance with applicable regulatory authority, in cases involving SNAP benefits, a fair hearing, Initial Decision, and Final Agency Decision are all to be completed within 60 days from the receipt of an individual's request for a fair hearing. See 7 C.F.R. § 273.15(c)(1). Additionally, it should be noted that only one adjournment of no more than 30 days is permitted in SNAP cases. See N.J.A.C. 1:10-9.1(a), (b), N.J.A.C. 10:87-8.6(a)(4)(i) and 7 C.F.R. 273.15(c)(4). When an adjournment is given, the due date for full completion of the case, including issuance of the Final Agency Decision, is extended by the number of days that the fair hearing was adjourned, but not to exceed 30 days. *Ibid.* In the present case, the fair hearing was requested by Petitioner in late July, with one adjournment given, which exceeded 30 days. The due date for full completion of this matter was November 4, 2019, and this office issued the Final Agency Decision on November 1, 2019, to ensure regulatory compliance and timeliness. Counsel for the parties should be mindful of these time constraints, and if necessary, take measures that are needed, such as requesting electronic receipt of the ALJ's Initial Decision, to allow the ability to submit Exceptions within the time frames this office must issue Final Agency Decisions.

By way of further comment, I note for the benefit of Petitioner's counsel that replies to Exceptions are not permitted in DFD hearings. See N.J.A.C. 1:10-18.2.

Finally, also by way of comment, I have reviewed the Exceptions submitted on behalf of the Agency, and I 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.

Natasha Johnson
Assistant Commissioner

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