



State of New Jersey

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TRENTON, NJ 08625-0716

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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 16782-18 J.C.

AGENCY DKT. NO. C475116007 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from the Respondent Agency's denial of Emergency Assistance ("EA") benefits in the form of back utility payments. The Agency denied Petitioner EA benefits, contending that she had the capacity to prevent her emergency, and that it was unable to pay for past due utility payments transferred from prior residences. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On December 12, 2018, the Honorable Irene Jones, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On January 4, 2019, the ALJ issued an Initial Decision, remanding the matter to the Agency to reevaluate Petitioner's eligibility for EA benefits in the form of back utilities.

No Exceptions to the Initial Decision were received.

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, REVERSE the Agency's determination, and REMAND the matter to the Agency, based on the discussion below.

N.J.A.C. 10:90-6.3(a)(5) provides, in pertinent part, that payment shall be authorized up to six calendar months of retroactive utility payments if it will prevent the loss of utilities or make utilities operable. Payment for more than six calendar months of retroactive utility payments shall be made only under extraordinary circumstances subject to authorization by DFD.

Here, Petitioner applied for back utility payments in the amount of \$1,739.48, which amount was comprised of \$1,382.84 in transfer bills from at least five different utility company accounts. See Initial Decision at 2; see also Exhibit R-1 at 17-26. The record does not indicate how many months of utility payments are past due. Of note, Petitioner testified that she had moved quite frequently since 2012, but no explanation for such numerous moves was provided. See Initial Decision at 2. The Agency denied Petitioner EA benefits, contending that it does not pay transferred utility bills; however, the ALJ found that there was no such provision in the regulation warranting such a denial. See Initial Decision at 3; see also Exhibit R-1 at 2-5, and N.J.A.C. 10:90-6.3(a)(5). Further, the ALJ found that there was



insufficient information in the record to determine whether the payment of six months of back utilities would prevent a shut-off, as required pursuant to regulatory authority, and remanded the matter to the Agency to reevaluate Petitioner's eligibility for EA benefits in the form of retroactive utility payments. See Initial Decision at 2-3; see also N.J.A.C. 10:90-6.3(a)(5).

While I agree with the ALJ that there is no regulatory authority prohibiting the payment of past due utility transfer bills, and that the Agency should reevaluate Petitioner's eligibility for retroactive utility payments, I find that the Agency should also consider other factors in determining Petitioner's EA benefits eligibility, not just whether payment of six months of back utility payments would prevent a shut off as ordered by the ALJ. See Initial Decision at 3. Specifically, the record also reflects that the Agency denied Petitioner EA benefits contending that she had the capacity to avoid a utility shut-off, although that issue was not addressed in the Initial Decision. See Exhibit R-1 at 3. On that basis, I direct the Agency to look into a number of other factors when evaluating Petitioner's eligibility for retroactive utility payments. Particularly, based on an independent review of the record, I find that Petitioner's monthly rent is over the fair market rent for Essex County, and that there is no indication in the record as to how Petitioner has been paying her rent, or how she plans on paying her rent going forward. See Initial Decision at 2; see also N.J.A.C.10:90-6.1(c)(3), -6.3(a)(6), -6.3(a)(7)(i)(1), and DFD Instruction 18-09-04. There is also nothing in the record regarding the circumstances surrounding Petitioner's continual moves since 2012, and why she failed to pay her utility bills when due. See N.J.A.C. 10:90-6.1(c)(3). The Initial Decision is modified to reflect this finding. See Initial Decision at 2.

Finally, I note that there are many programs that the Agency should assist Petitioner in pursuing, such as, the "Winter Termination Program" wherein Petitioner may request to be put on a payment plan, make good faith payments each month, and in return be guaranteed service from November 15, 2018, to March 15, 2019, without fear of termination; the "Medical Emergency" program, in light of Petitioner's child who suffers with asthma, wherein residential utility service shut-off for nonpayment is prohibited if a medical emergency exists, as certified by a physician; the "Low Income Home Energy Assistance Program ("LIHEAP"); and the Universal Service Fund ("USF"), just to name a few. See Exhibit R-1 at 55.

By way of comment, Petitioner is advised that should she again be denied EA benefits in the form of retroactive utility payments, she may request another fair hearing on that issue alone.

Accordingly, the Initial Decision is hereby MODIFIED, the Agency's action is REVERSED, and the matter is REMANDED to the Agency, based on the discussion above.

Officially approved final version.

FEB 21 2019

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Natasha Johnson  
Director

