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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 01510-19 R.B.

AGENCY DKT. NO. C291224016 (PASSAIC COUNTY BOARD OF SOC. SVCS.)

Petitioner appeals from Respondent Agency's termination of Emergency Assistance ("EA") due to an alleged Intentional Program Violation ("IPV") for non-compliance with his EA service plan ("SP"). Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On February 4, 2019, the Julio C. Morejon, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents. On February 5, 2019, the ALJ issued an Initial Decision, reversing the Agency's termination of Petitioner's EA benefits.

Exceptions to the Initial Decision were filed by the Agency on February 8, 2019.

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 MODIFY the ALJ's Initial Decision, REVERSE the Agency's determination, and REMAND the matter to the Agency, as discussed below.

Pursuant to N.J.A.C. 10:90-9.1(b), an Agency must provide both adequate and timely notice advising of a termination, denial or suspension of welfare benefits, including EA benefits. Adequate notice is a written notice outlining the intended action, the reasons for the action, and includes the specific regulation(s) supporting the intended action. N.J.A.C. 10:90-9.1(a). Timely notice is defined as "a notice that is mailed to the recipient at least 10 calendar days before the effective date of the action." N.J.A.C. 10:90-9.1(b)(1) (emphasis added).

An action, seeking a finding of an IPV, may only be brought by conducting an administrative disqualification hearing. See N.J.A.C. 10:90-11.1 et seq. Such actions have a specific procedural process which must be followed, including advance notice of the hearing at least 30 days prior to the scheduled hearing date, and with service of said notice by certified mail return receipt requested. See N.J.A.C. 10:90-11.5(f). This procedure is mandatory and cannot be omitted, as it ensures that due process is afforded prior to the finding of an IPV and the imposition of the attendant periods of disqualification from participation in the Work First New Jersey ("WFNJ") program. See N.J.A.C. 10:90-11.11(a).

In the present matter, it is clear that the Adverse Action Notice (hereinafter "the notice") issued by the Agency was improper and is therefore, void. See Exhibit R-1. First, the notice is dated December 3, 2018, yet the action terminating Petitioner's EA is inappropriately backdated to August 1, 2018. Ibid. Second, while the text of the reason for the Agency's action references an SP violation, no citation for this basis is included, and moreover, the citation included is incomplete. Ibid. Furthermore, an action by an Agency, seeking a finding of an IPV, must be brought through the administrative disqualification hearing process and procedure, with proper 30-day advance notice given to the client, and cannot be brought through the regular fair hearing procedure, as was done in this case. See N.J.A.C. 10:90-11.5(f).



While I agree with the ALJ in this matter that the facts do not support the finding of an IPV, the improper notice issued by the Agency in this matter, backdating the termination date, containing an incomplete regulatory basis citation, and omitting another, as well as the inappropriate withholding payment of rent from the landlord for four months, resulting in an eviction action against Petitioner, invalidates the Agency's termination altogether. Moreover, as noted above, the Agency did not follow the requisite procedure for bringing an IPV, which further nullifies the Agency's actions herein. Accordingly, the Initial Decision is modified to reflect these findings.

The Agency is directed to pay Petitioner's back rent in full, to bring him current, and to work with Petitioner to revise his requisite EA paperwork to reflect the proper address of his residence. Petitioner shall provide documentation to reflect his current address. With respect to Petitioner's adult daughter, who is residing with Petitioner, as the record reflects that she is receiving WFNJ/Temporary Assistance for Needy Families ("WFNJ/TANF") benefits, see Initial Decision at 3, this matter is remanded to the Agency to determine if she is eligible for EA benefits. If Petitioner's daughter is eligible for EA benefits, then the rental amount shall be apportioned between her and Petitioner's EA, respectively. However, if Petitioner's daughter is no longer receiving WFNJ/TANF benefits, or is not eligible for EA benefits, she will then be responsible for her portion of the rent.

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.

Based on the foregoing, the Initial Decision is hereby MODIFIED, the Agency's action is REVERSED, and matter is REMANDED to the Agency, as outlined above.

Officially approved final version.

FEB 13 2019

Natasha Johnson
Director

