



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF HUMAN SERVICES
DIVISION OF FAMILY DEVELOPMENT
PO BOX 716

SARAH ADELMAN
Commissioner

TAHESHA L. WAY
Lt. Governor

TRENTON, NJ 08625-0716

NATASHA JOHNSON
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 11152-24 D.E.

AGENCY DKT. NO. **C827767007 (ESSEX COUNTY DIVISION OF WELFARE)**

On August 27, 2024, a Final Agency Decision ("FAD") was issued in this matter. This Amended FAD is being issued to recognize receipt of Exceptions filed by the Agency via electronic email on August 21, 2024.

Petitioner appeals from the Respondent Agency's denial of Emergency Assistance ("EA") in the form of Temporary Rental Assistance ("TRA") benefits. The Agency denied Petitioner EA/TRA benefits, contending that she failed to take reasonable steps to resolve her emergency. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On August 16, 2024, and continued on August 19, 2024, the Honorable Bindi Merchant, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On August 20, 2024, the ALJ issued an Initial Decision, reversing the Agency's determination.

Exceptions to the Initial Decision were received from the Agency on August 21, 2024.

As Assistant Commissioner, 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.

The purpose of EA is to meet the emergent needs of public assistance recipients, such as imminent homelessness, so that the recipient can participate in work activities without disruption and continue on the path to self-sufficiency. N.J.A.C. 10:90-6.1(a).

N.J.A.C. 10:90-6.3(a)(5) provides, in pertinent part, that "payment shall be authorized up to any three calendar months of retroactive rental payments if it will prevent actual eviction Payment for more than three calendar months of retroactive rental payments ... shall be made only under extraordinary circumstances ... subject to authorization by DFD."

EA benefits, in the form of TRA, may be provided "when the recipient is facing eviction, in order to maintain current permanent housing which had been previously affordable but which is no longer affordable for reasons such as, but not limited to, loss of employment, temporary unemployment or underemployment and it is anticipated that such housing will again become affordable; or when it is determined that maintaining the unit in the current housing arrangement is both the least costly alternative and serves to preserve the family structure while the search for affordable housing continues." N.J.A.C. 10:90-6.3(a)(6).

Here, the ALJ found, and the record substantiates, that Petitioner had diligently worked, and continues to work, to resolve her emergent situation, but due to her pending eviction and other extenuating circumstances, any such resolutions have



been impeded. See Initial Decision at 3-5; see also Exhibits P-1, P-2, R-5, R-7, R-8, R-9 at 1. The ALJ also found that with the assistance of EA/TRA benefits in paying her past due rent, Petitioner will soon be employed and able to pay her monthly rent going forward. See Initial Decision at 5. Based on the totality of Petitioner's circumstances, and actions, I find that EA/TRA benefits will help Petitioner on her path to self-sufficiency, and as such, I concur with the ALJ's conclusion that the Agency's denial of EA/TRA benefits to Petitioner was improper and must be reversed. See Initial Decision at 5; see also Exhibit R-2, and N.J.A.C. 10:90-6.1(a), -6.3(a)(5), (6). Therefore, in order to preserve Petitioner's housing which appears will be affordable going forward, the Agency is directed to provide Petitioner with back rent in an amount required to bring her current. See N.J.A.C. 10:90-6.3(a)(5).

Additionally, I note that an Exhibit R-11, which is an adverse action notice dated August 16, 2024, was submitted into evidence in this matter. It is a basic tenet of due process that an individual is to be given appropriate notice and an opportunity to be heard. Procedural due process requires that both parties in a contested matter are to be given the opportunity to review, in advance, any evidence which will be used to support and substantiate their respective positions. Due process rights in the fair hearing process are accomplished through the proper notice, both timely and adequate, together with the exchange of discovery in advance of a fair hearing. See N.J.A.C. 10:90-9.1, -9.11, and N.J.A.C. 1:10-10.1(a). Such due process was not afforded to Petitioner regarding the August 16, 2024, adverse action notice. Moreover, the scope of the present matter, and the issue transmitted for determination, is the April 19, 2024, denial of EA benefits. See Exhibit R-2. The hearing in this matter began on August 16, 2024, a Friday, and at the Agency's request, the matter was continued to the following Monday, August 19, 2024, at which time testimony concluded and the record closed. See Initial Decision at 1, 2. The Agency in this matter, based on information obtained during the first day of testimony on August 16, 2024, issued another adverse action notice, dated that same day, further denying Petitioner EA benefits due to purported wages during some of the months for which Petitioner sought EA benefits. Id. at 4. I find that the August 16, 2024, adverse action notice is not only beyond the scope of the present matter and transmitted issue, but submission and inclusion of the August 16, 2024, adverse action notice in the record was inappropriate, and in clear violation of Petitioner's due process rights to have proper notice, as it was not generated prior to the present fair hearing, but rather, after the fair hearing had already begun, and as such, Petitioner was never given the advance opportunity to review the documentation contained in Exhibit R-11. Accordingly, as alluded to by the ALJ, see Initial Decision at 5, should the Agency determine that Petitioner was not, in fact, eligible for WFNJ and/or EA benefits during any of the months applicable in this matter, the Agency may seek proper recourse, which may include recoupment for payment of such months, following issuance of proper notice, both adequate and timely, and Petitioner thereafter shall have a right to request a fair hearing, and properly contest the Agency's position and any recoupment being sought. The Initial Decision is modified to reflect these findings.

By way of comment, based on the above findings, I find that the arguments contained in the Exceptions do not alter my decision in this matter.

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

Officially approved final version. September 05, 2024

Natasha Johnson
Assistant Commissioner

