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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 16864-18 A.W.

AGENCY DKT. NO. C518385002 (BERGEN COUNTY BD. OF SOC. SVCS.)

Petitioner appeals from the Respondent Agency's denial of Emergency Assistance ("EA") benefits and the imposition of a six-month period of ineligibility for EA benefits. The Agency denied Petitioner EA benefits, and imposed a six-month EA ineligibility penalty, contending that she refused shelter placement, thereby causing her own homelessness. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On December 11, 2018, the Honorable Evelyn J. Marose, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. The record was held open for the submission of additional documents by the parties, and then closed on December 14, 2018. On January 4, 2019, the ALJ issued an Initial Decision, affirming the Agency's determination.

Exceptions to the Initial Decision were filed by Legal Services, on behalf of Petitioner, on January 11, 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, and AFFIRM the Agency's determination, as discussed below.

In order to be eligible for EA benefits, N.J.A.C. 10:90-6.1(c) provides, in pertinent part, that the individual must have an actual or imminent eviction from prior housing, and the assistance unit is in a state of homelessness or imminent homelessness due to circumstances beyond their control or the absence of a realistic capacity to plan to avoid their emergent situation. Documentation must be presented to the Agency demonstrating that an eviction is pending or has occurred. See N.J.A.C. 10:90-6.3(a)(1)(ii). Such documentation may be in the form of a letter from a landlord or other person, such as a family member or relative, serving in such a capacity. Ibid. EA benefits shall not be provided for a period of six months when an applicant "has caused his or her own homelessness, without good cause." N.J.A.C. 10:90-6.1(c)(3).

Here, the record reflects that the Agency denied Petitioner EA benefits by notice dated August 13, 2018, and imposed a six-month EA ineligibility penalty effective July 18, 2018, the date of Petitioner's



application for EA benefits, through January 18, 2019. See Initial Decision at 2; see also Exhibit R-3. The Agency denied Petitioner EA benefits, and imposed a six-month EA ineligibility penalty, because she refused shelter placement, thereby causing her own homelessness, and the ALJ agreed with that determination, based on regulatory authority which provides that the Agency shall determine the most appropriate form of emergency housing, which may include shelter placement. *Ibid.*; see also N.J.A.C. 10:90-6.1(c)(3), -6.3(a)(1). While I agree with the ALJ's conclusion above, I find that the ALJ's application of N.J.A.C. 10:90-4.15(a), regarding the Agency's imposition of a six-month EA ineligibility penalty, to be misplaced. See Initial Decision at 4. Specifically, N.J.A.C. 10:90-4.15(a) relates to a sanctioning of Work First New Jersey ("WFNJ") cash benefits due to a failure to comply with WFNJ program requirements, and is not applicable in EA benefits matters. Moreover, the six-month period of ineligibility for EA benefits, due to a causing of one's own homelessness, is a penalty, not a sanction, and in accordance with regulatory authority, said penalty can neither be corrected, nor cured through compliance. See N.J.A.C. 10:90-6.1(c)(3). The Initial Decision is modified to reflect this clarification. See Initial Decision at 4.

The ALJ also found that, regardless of whether or not Petitioner was found to have caused her own homelessness, the letter from Petitioner's landlord did not establish that she was homeless or imminently homeless, and as such, the ALJ found Petitioner ineligible for EA benefits on that basis. See Initial Decision at 3-4; see also N.J.A.C. 10:90-6.1(c). I agree, particularly because the letter from Petitioner's landlord, dated October 18, 2018, states that Petitioner's last rent payment was July 2018, and at the time of the hearing, some six months since the last rental payment, no eviction had yet been initiated. See Exhibit R-18. Based on the foregoing, the ALJ concluded that the Agency's denial of EA benefits and the imposition of a six-month EA ineligibility penalty, were proper and must be affirmed. See Initial Decision at 4; see also Exhibit R-3. I agree.

Moreover, the transmittal in this matter shows that Petitioner requested a fair hearing, appealing the Agency's August 13, 2018, denial, on November 14, 2018. Therefore, it is clear from the record that Petitioner did not appeal the August 13, 2018, denial of EA benefits, or the resultant six-month EA ineligibility penalty, within the 90-day timeframe for appeal, and is now out of time to do so. See Exhibit R-3; see also N.J.A.C. 10:90-9.10. As such, consideration by the ALJ of any good cause basis for Petitioner's refusal to except shelter placement, the Agency's subsequent denial of EA benefits, and the imposition of a six-month EA ineligibility penalty, is now untimely and improper. See N.J.A.C. 10:90-9.10. Further, I find no extraordinary circumstances in the record which would warrant expansion of that time. *Ibid.*

Finally, as Petitioner's six-month EA ineligibility penalty expires on January 18, 2019, I find that Petitioner may reapply for EA benefits provided she continues to need same, with eligibility contingent upon her meeting the EA eligibility requirements as set forth at N.J.A.C. 10:90-6.1 et seq. See Initial Decision at 4; see also Exhibit R-3. Petitioner is reminded that the Agency shall determine the form of EA benefits to be provided, which may include shelter placement. See N.J.A.C. 10:90-6.3(a)(1).

By way of comment, the Agency shall refer Petitioner to any and all agencies and organizations that may be able to assist with her current needs, including Social Services for the Homeless.

By way of further comment, I have reviewed the Exceptions submitted on behalf of Petitioner, 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 action is AFFIRMED, as outlined above.



Officially approved final version.

FEB 21 2019

Natasha Johnson
Director

