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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 00246-19 C.B.

AGENCY DKT. NO. C081376001 (ATLANTIC CO. DEPT OF FAM. & COM. DEV)

Petitioner appeals from the Respondent Agency's termination of Work First New Jersey/Temporary Assistance for Needy Families ("WFNJ/TANF") benefits and the denial of Emergency Assistance ("EA") benefits. The Agency terminated Petitioner's WFNJ/TANF benefits due to a sanction, contending that Petitioner failed to comply with the required WFNJ work activity, and denied Petitioner EA benefits due to purported noncompliance with her EA service plan ("SP") by failing to comply with the WFNJ work activity. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On February 1, 2019, the Honorable Catherine A. Tuohy, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On February 19, 2019, the ALJ issued an Initial Decision, affirming the Agency's determination.

No Exceptions to the Initial Decision were received.

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 MODIFY the Agency's determination, as discussed below.

In order to maintain eligibility for receipt of WFNJ benefits, a recipient must cooperate with, and participate in, the WFNJ work activity requirements. See N.J.A.C. 10:90-2.2(a)(2), -4.1(d). If a WFNJ benefits recipient fails to comply with their work activities without good cause, the recipient is subject to a sanction resulting in a pro-rata reduction of WFNJ benefits for the first month. See N.J.A.C. 10:90-4.13(b). Thereafter, if the WFNJ benefits recipient is still non-compliant, without good cause, the WFNJ benefits will be suspended for one month. See N.J.A.C. 10:90-4.13(b)(1). If the non-compliance continues, the recipient's case will close the month after the suspension of WFNJ benefits. See N.J.A.C. 10:90-4.13(b)(2).

Pursuant to N.J.A.C. 10:90-4.13(e), -6.1(c)(5) and -6.3(a)(7)(ii), EA benefits shall not be discontinued, due to a sanction for noncompliance with the work requirement, until one month after all WFNJ cash assistance has been terminated and the case closed due to the failure to correct a sanction. Further, in accordance with N.J.A.C. 10:90-6.1(c)(4), "[a]n adult household member who incurs a sanction as



a result of his or her failure to comply with the WFNJ program work requirements may apply for and receive emergency assistance for himself or herself and the eligible unit while in sanction status.”

Here, in accordance with regulatory authority, Petitioner and her husband (“C.B.”) were required to participate in a WFNJ work activity. See Initial Decision at 2; see also Exhibits R-1 at 30, 35, 36, 38, R-2 at 29-37, and N.J.A.C. 10:90-2.2(a)(2). On October 1, 2018, both Petitioner and C.B. were sanctioned for failing to comply with their work activity. See Initial Decision at 3; see also Exhibit R-2 at 22-27, 38, and N.J.A.C. 10:90-4.13. Petitioner and C.B. failed to come into compliance in order to lift the sanction, and by Notice dated October 2, 2018, their EA benefits were terminated, effective November 1, 2018. See Initial Decision at 3; see also Exhibit R-2 at 22-26. Petitioner did not appeal that termination. See Initial Decision at 3. Thereafter, by Agreements dated November 15, 2018, Petitioner and C.B. agreed to participate in a work activity in order to cure their sanctions, and were provided with transportation funds and child care services. *Id.* at 3-4; see also Exhibit R-1 at 26-35. Petitioner then reapplied for EA benefits, in the form of back rent, on November 20, 2018. See Initial Decision at 3; see also Exhibit R-2 at 6-12. However, neither Petitioner nor C.B. attended their work activity, and their sanction remained in place. See Initial Decision at 2-4; see also Exhibit R-1 at 13-20, and N.J.A.C. 10:90-4.13(b), (c). Consequently, by notices dated December 13, 2018, and December 18, 2018, Petitioner and C.B. were advised that their WFNJ/TANF benefits would be terminated on January 1, 2019, and that their EA benefits application had been denied, effective November 20, 2018, for failure to come into compliance with the required WFNJ work activity. See Initial Decision at 3; see also Exhibits R-1 at 44, R-2 at 1-5, and N.J.A.C. 10:90-4.13(a), -6.6(a). Although C.B. testified that he could not attend the work activity because his car broke down and he used his transportation funds to make repairs, the ALJ found that C.B. did not have good cause for his failure to attend because the transportation funds provided were meant to get him to his work activity and not for car repairs. See Initial Decision at 4-5; see also Exhibit R-1 at 22, 28, 34. The record is devoid of any testimony or documentation from Petitioner to establish good cause for her failure to participate in the work activity. The ALJ concluded that Petitioner and C.B. were aware of their requirement to comply with their work activity and SP, and that they had failed to comply, without good cause. See Initial Decision at 5-6. Based on the foregoing, the ALJ also concluded that the Agency’s termination of Petitioner’s and C.B.’s WFNJ/TANF benefits and its denial of their application for EA benefits were proper, and imposed a six-month period of ineligibility for EA benefits. *Id.* at 6; see also Exhibits R-1 at 44, R-2 at 1-5, and N.J.A.C. 10:90-4.13(a), -6.6(a).

While I agree with the ALJ, that the Agency’s termination of Petitioner’s and C.B.’s WFNJ/TANF benefits, effective January 1, 2019, was proper, I find that the Agency’s denial of their application for EA benefits was improper. See N.J.A.C. 10:90-4.13(e), -6.1(c)(4),(5), -6.3(a)(7)(ii). Rather, in accordance with applicable regulatory authority, Petitioner and C.B. should have been eligible for EA benefits through January 31, 2019, which is one month after all WFNJ cash assistance had been terminated. *Ibid.* This is true despite the fact that an SP may require an individual to cooperate with WFNJ requirements. *Ibid.* However, as Petitioner had applied for EA benefits in the form of back rent, and has since been evicted, the Agency is unable to provide Petitioner with retroactive EA benefits. See Initial Decision at 4; see also Exhibit P-1. Moreover, as Petitioner and C.B. are no longer WFNJ/TANF benefits recipients, they are ineligible for EA benefits. See N.J.A.C. 10:90-6.2(a) (stating that only WFNJ cash assistance recipients and Supplemental Security Income recipients are eligible for EA benefits). Further, I disagree with the ALJ’s imposition of a six-month EA ineligibility penalty for failure of Petitioner and C.B. to comply with their EA service plan (“SP”). See Initial Decision at 6. Specifically, no SP was put into the record to substantiate the Agency’s claim that Petitioner had violated her SP, but regardless, as referenced above, regulatory authority clearly permits a WFNJ benefits recipient, who is in sanction status, to apply for, and receive EA benefits. See N.J.A.C. 10:90-6.1(c)(4). The Initial Decision, as well as the Agency’s determination, is modified to reflect this finding.

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.



Accordingly, the Initial Decision is hereby MODIFIED, and the Agency's action is also MODIFIED, as outlined above.

Officially approved final version.

Natasha Johnson  
Director

APR - 1 2019

