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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 01381-19 T.M.

AGENCY DKT. NO. S482741012 (MIDDLESEX COUNTY BD. OF SOC. SVCS.)

Petitioner appeals from the Respondent Agency's termination of Emergency Assistance ("EA") benefits and the imposition of a six-month period of ineligibility for EA benefits. The Agency terminated Petitioner's EA benefits, and imposed a six-month EA ineligibility penalty, contending that she failed to comply with her EA service plan ("SP"). Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On March 1, 2019, the Honorable Tricia M. Caliguire, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On March 14, 2019, the ALJ issued an Initial Decision, reversing the Agency's determination.

Exceptions to the Initial Decision were filed by the Agency on March 20, 2019.

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(g) states that, "[p]rior to EA termination, the agencies shall review, with the recipient, the reason(s) for the termination. If additional barriers are identified that may have prevented EA compliance, then the recipient is considered to have good cause and shall not be terminated and a penalty shall not be imposed. The recipient shall be required to follow through with services to address those barriers for continued EA eligibility. Such services shall be identified as mandatory activities in the [SP]."

Here, the record reflects that Petitioner executed four SPs wherein she agreed, among other things, to secure permanent affordable housing. See Initial Decision at 3; see also Exhibits R-2 through R-5. Petitioner was granted a Section 8 housing voucher, but failed to secure subsidized housing prior to the expiration of that voucher, in violation of her SPs. See Initial Decision at 2-3; see also Exhibit R-8. As a result, the Agency terminated Petitioner's EA benefits and imposed a six-month EA ineligibility penalty. See Initial Decision at 4; see also Exhibit R-9, and N.J.A.C. 10:90-6.6(a). However, the ALJ found that, although Petitioner may have violated her SPs, in accordance with the recently promulgated State of New Jersey Senate Bill, No. S866, P.L. 2018, c. 164, effective December 20, 2018 ("S866"), which extends EA benefits eligibility for certain categories of individuals, and DFD Instruction ("DFDI") 19-02-01, Petitioner may still be eligible for EA benefits regardless of her SP violation. See Initial Decision at 5-6. Based on the foregoing, the ALJ reversed the Agency's termination of EA benefits, and the imposition of a six-month EA ineligibility penalty, and directed the Agency to reevaluate Petitioner's eligibility for EA benefits in accordance with S866. *Id.* at 6; see also Exhibit R-9.

While I agree with the ALJ's ultimate conclusion, I respectfully disagree with the ALJ's legal analysis of this matter. See Initial Decision at 5-6. Rather, I find that DFDI 19-02-01 clearly states that "[a]ll other EA program rules and regulations



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including but not limited to general eligibility criteria, program requirements, types of housing assistance available, and compliance enforcement shall remain in effect by this amendment of law [S866]." See DFDI 19-02-01 at 2. However, based on the record provided, and the ALJ's finding that Petitioner's significant mental health issues served as a barrier preventing her self-sufficiency, I find that Petitioner had good cause for failing to comply with her SPs, and on that basis I also find that the Agency's termination of Petitioner's EA benefits and the imposition of a six-month EA ineligibility penalty were improper and must be reversed. See Initial Decision at 3, 5; see also Exhibits R-2 through R-5, R-9 and N.J.A.C. 10:90-6.3(g). Although Petitioner's SPs clearly address her mental health treatment responsibilities, it is unclear from the record whether or not, in light of Petitioner's mental health issues, the Agency had provided Petitioner with any assistance with securing Section 8 housing in a timely manner. See Initial Decision at 3; see also Exhibits R-2 through R-7. Further, because it is unclear from the record whether or not Petitioner meets the eligibility requirements for an extension of EA benefits pursuant to S866, I am remanding this matter to the Agency, and directing that the Agency reevaluate Petitioner's eligibility for continued EA benefits in accordance with the new law. See State of New Jersey Senate Bill, No. S866, P.L. 2018, c. 164, effective December 20, 2018. The Initial Decision is modified to reflect this finding.

By way of comment, as the record indicates that Petitioner has mental health issues which appear to prevent her from compliance with EA benefits eligibility requirements, Petitioner "shall be required to follow through with services to address those barriers for continued EA eligibility." See Initial Decision at 3, 5; see also Exhibits R-2 through R-5, and N.J.A.C. 10:90-6.3(g). Further, "such services shall be identified as mandatory activities in the [SP]." See N.J.A.C. 10:90-6.3(g), -6.6(a)(1)(iii)(7). Finally, Petitioner is advised that any future violation of her SP, or failure to follow through on securing permanent affordable housing, may result in the termination of EA benefits and the imposition of a six-month EA ineligibility penalty. See N.J.A.C. 10:90-6.6(a).

By way of further comment, I have reviewed the Agency's Exceptions, and I find that the arguments made therein do not alter my decision in this matter.

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

Officially approved final version.

APR 15 2019

Natasha Johnson
Director

