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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 01001-20 D.C.

AGENCY DKT. NO. C779214007 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from the Respondent Agency's denial of Emergency Assistance ("EA") benefits. The Agency denied Petitioner EA benefits because her two-bedroom apartment was over the Fair Market Rent ("FMR") for an appropriate one-bedroom apartment in Essex County. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On January 24, 2020, the Honorable Kelly J. Kirk, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On January 27, 2020, the ALJ issued an Initial Decision, reversing the Agency's determination.

Exceptions to the Initial Decision were filed by the Agency on January 28, 2020. A Response to the Agency's Exceptions was filed by Legal Services, on behalf of Petitioner, on January 29, 2020.

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, and REVERSE the Agency's determination, based on the discussion below.

Here, the record reflects that Petitioner is a Work First New Jersey/General Assistance ("WFNJ/GA") benefits recipient. See Initial Decision at 2. Petitioner lives in a two bedroom apartment with a monthly rent of \$1,165, not including utilities, and her adult daughter attends college away from home and only resides with Petitioner on weekends. See Initial Decision at 2, 7; see also GAAS pay history, and "Apartment Lease." The record also reflects that Petitioner was married and a stay-at-home mom, who had never received WFNJ or EA benefits, and who had only fallen behind in the rent when her husband of 27 years left her without any financial support. See Initial Decision at 2-4. Petitioner is now facing eviction. Id. at 6-7; see also "Order for Orderly Removal." Of note, Petitioner's husband had his name taken off the lease, and the landlord has since released him from liability for past due rent. See Initial Decision at 4-6; see also "Stipulation of Settlement," and "Walter Mueller Auto Repair" letter, dated December 28, 2019. Consequently, Petitioner applied, and then reapplied, for EA benefits in the form of Temporary Rental Assistance ("TRA"). See Initial Decision at 3-6. The Agency denied Petitioner's re-application for EA/TRA benefits because, as a WFNJ/GA benefits recipient assistance unit of one, she was only eligible for a one-bedroom apartment, and her two-bedroom apartment was over the FMR



of \$1,218 for a one-bedroom apartment in Essex County because it did not include utilities. See Initial Decision at 5-6; see also "Notification Form," dated December 31, 2019, and N.J.A.C. 10:90-6.3(a)(7)(i)(1) and DFD Informational Transmittal ("DFDIT") No. 19-28. Moreover, the Agency contends that for Petitioner to remain in her two-bedroom apartment and be provided with EA/TRA benefits, her daughter would be required to pay her pro rata share of the rent. See Initial Decision at 11; see also N.J.A.C. 10:90-6.1(c)(2).

Based on Petitioner's particular circumstances, including those discussed above, the ALJ found that Petitioner's emergency was due to circumstances beyond her control, that she did not have the capacity to plan to avoid her emergency, and that she should be provided EA/TRA benefits for her two-bedroom apartment because, in accordance with applicable regulatory authority, "TRA is the preferred form of emergency housing assistance in all situations, as appropriate," and with utility assistance applied for, Petitioner's two-bedroom apartment would be within the FMR for Essex County. See Initial Decision at 8-12; see also N.J.A.C. 10:90-6.1(c), -6.3(a)(5), (6). Moreover, the ALJ opined that providing EA/TRA benefits to Petitioner is more cost effective than if she were to be placed in a shelter. See Initial Decision at 11. Additionally, the record reflects that Petitioner has filed for child and spousal support, that she is employable and awaiting responses on two job applications, and that her daughter is currently employed, all factors indicating a positive move toward self-sufficiency for Petitioner. See Initial Decision at 7; see also "Civil Action Order." Further, the ALJ found that Petitioner's current apartment may very well be within the FMR for a one-bedroom once Petitioner is approved for the utility assistance she has applied for. See Initial Decision at 11-12. Based on the foregoing, the ALJ concluded that the Agency's denial of EA/TRA benefits to Petitioner was improper and must be reversed. *Id.* at 12; see also "Notification Form," dated December 31, 2019, and N.J.A.C. 10:90-6.1(c), -6.3(a)(5), (6).

I agree with the ALJ's ultimate conclusion, however, I find that once the Agency has provided Petitioner with EA/TRA benefits in the form of back rent, if Petitioner chooses to remain in her two-bedroom apartment, her daughter will be responsible for paying half of the monthly rent. See N.J.A.C. 10:90-6.1(c)(2). If Petitioner's daughter is unable or unwilling to pay half of the current monthly rent, Petitioner will be required to secure a one-bedroom apartment within the FMR for Essex County, and the Agency is directed to incorporate such directives into Petitioner's EA service plan. See N.J.A.C. 10:90-6.3(a)(1); see also DFDIT No. 19-28. The Initial Decision is modified to reflect this finding.

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

By way of further comment, I note for the benefit of Petitioner's counsel that replies to Exceptions or Cross-Exceptions are not permitted in DFD hearings. See N.J.A.C. 1:10-18.2.

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

Officially approved final version.

Natasha Johnson
Assistant Commissioner

JAN 31 2020

