



State of New Jersey

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Assistant Commissioner

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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

FINAL DECISION

OAL DKT. NO. HPW 01188-20 W.H.

AGENCY DKT. NO. C057403005 (CAPE MAY COUNTY BD. OF SOC. SVCS.)

Petitioner appeals from the Respondent Agency's termination of Work First New Jersey/General Assistance ("WFNJ/GA") and Emergency Assistance ("EA") benefits. The Agency terminated Petitioner's WFNJ/GA benefits, contending that Petitioner's unearned income from Unemployment Insurance Benefits ("UIB") put him over the maximum allowable benefit level for receipt of such benefits. The Agency terminated Petitioner's EA benefits because he was no longer a WFNJ, nor a Supplemental Security Income ("SSI"), benefits recipient. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law ("OAL") for a hearing. A hearing was initially scheduled for February 13, 2020, but was adjourned to permit Petitioner to obtain legal counsel. The matter was then rescheduled for March 26, 2020, but was then adjourned due to the onset of the COVID-19 pandemic. The case was then rescheduled for a telephonic hearing on July 9, 2020, but Petitioner failed to call in for the hearing, and the case was dismissed. Thereafter, Petitioner contacted the Agency, as well as the Bureau of Administrative Review and Appeals ("BARA"), claiming that he thought he would be called for the hearing, rather than his having to call in himself. The matter was then returned to the OAL docket for a hearing on August 20, 2020. On that date, Petitioner called in for the hearing, and the hearing began. However, Petitioner again contended that he was entitled to legal counsel, despite the fact that he had had seven months to consult with an attorney. Petitioner then hung up, but the Agency was able to persuade him to call back and proceed with the hearing. While conferencing the case, Petitioner then again hung up. The case was then set for a preemptory hearing date of September 10, 2020. On that date, the Honorable Dorothy Incarvito-Garrabrant, Administrative Law Judge ("ALJ"), held a telephonic plenary hearing, took testimony, admitted documents and the record then closed. On October 6, 2020, the ALJ issued an Initial Decision, affirming the Agency's determinations, and ordering that the Agency should proceed to recoup any overpayment of benefits issued as continued assistance pending that hearing due to Petitioner's intentional delay of the case.

No Exceptions to the Initial Decision were received

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 AFFIRM the Agency's determination, based on the discussion below.



Financial eligibility for Work First New Jersey ("WFNJ") benefits is determined based upon the assistance unit's countable income, both earned and unearned, as well as countable resources. See N.J.A.C. 10:90-3.1(a). Pursuant to N.J.A.C. 10:90-3.1(c), once initial financial eligibility for a WFNJ/GA benefits recipient is found to exist, financial eligibility continues to exist so long as the total countable income of the WFNJ/GA assistance unit ("AU"), with benefit of the appropriate disregards set forth in N.J.A.C. 10:90-3.8 for earned income, if applicable, is less than the maximum benefit payment level for the appropriate eligible AU size in accordance with Schedule IV at N.J.A.C. 10:90-3.5(b). For an employable AU of one, such as Petitioner, as of January 1, 2019, the maximum allowable benefit level was \$154, and as of July 1, 2019, the maximum allowable benefit level is \$185. See DFD Informational Transmittal Nos. 19-12 and 19-21.

In accordance with N.J.A.C. 10:90-3.9(a), income is either countable or exempt. Unearned income includes unemployment insurance benefits. See N.J.A.C. 10:90-3.9(e). Unearned income from UIB is not exempt for WFNJ eligibility purposes. See N.J.A.C. 10:90-3.19.

Only WFNJ cash assistance recipients and Supplemental Security Income ("SSI") benefits recipients are eligible for EA benefits. See N.J.A.C. 10:90-6.2(a).

Here, the record reflects that Petitioner applied for WFNJ/GA benefits on November 4, 2019, and was approved for benefits at the monthly, employable rate of \$185. See Exhibit R-2G. Petitioner also applied for EA benefits at the same time, and was approved for same. See Initial Decision at 3. The record also reflects that Petitioner failed to report income from UIB to the Agency. See Exhibit R-1E. During a verification for Supplemental Nutrition Assistance Program ("SNAP") benefits, Petitioner's receipt of UIB in the weekly amount of \$174 was discovered, and same was utilized to determine Petitioner's continued eligibility for WFNJ/GA benefits. *Ibid.*; see also Initial Decision at 3. The Agency determined that, even after a weekly garnishment for child support from Petitioner's weekly UIB amount, the monthly net amount of UIB of \$215 exceeded the allowable limit of \$185, and terminated Petitioner's WFNJ/GA benefits effective January 1, 2020. See Initial Decision at 3; see also Exhibits R-1D, R-1G and N.J.A.C. 10:90-3.1(c). Based on the foregoing, the ALJ concluded that Petitioner is ineligible for WFNJ/GA benefits due to excess income over the maximum benefit level for continued eligibility. See Initial Decision at 5-6; see also N.J.A.C. 10:90-3.5(b). Accordingly, the ALJ found that the Agency's termination of Petitioner's WFNJ/GA benefits was proper and must stand. *Id.* at 6; see also Exhibit R-1G. I agree. However, the Initial Decision is modified to reflect the proper maximum allowable benefit level of \$185 to the facts of Petitioner's WFNJ/GA benefits issue. See Initial Decision at 3, 6, see also N.J.A.C. 10:90-3.5(b), and DFD Informational Transmittal No. 19-21.

Further, the ALJ concluded that Petitioner was ineligible for EA benefits because he is no longer a WFNJ/GA benefits recipient, nor is he an SSI benefits recipient, and therefore, the Agency's January 6, 2020, termination of Petitioner's EA benefits was also proper and must stand. See Initial Decision at 6; see also Exhibit R-2E, and N.J.A.C. 10:90-6.2(a). I also agree.

Finally, during the hearing, Petitioner admitted that his income from UIB exceeded the WFNJ/GA eligibility limit. See Initial Decision at 4. Further, through consultation with an attorney in August and September of 2020 Petitioner was advised that, without WFNJ eligibility, he would no longer be eligible for EA benefits. *Ibid.* Petitioner also stated that, even though he knew he was ineligible for WFNJ/GA and EA benefits, he intentionally continued his benefits by delaying the hearing process. *Ibid.* The ALJ found Petitioner's actions purposeful, in order to intentionally obtain benefits to which he was not entitled, and ordered that the Agency "should take all appropriate action to recoup any overpayment of benefits to Petitioner." *Id.* at 4, 6, 7. I also agree.

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



Accordingly, the Initial Decision is hereby MODIFIED, and the Agency's determinations are AFFIRMED, as outlined above.

Officially approved final version.

OCT 27 2020

Natasha Johnson

Assistant Commissioner

