



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

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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 13886-14 D.P.

AGENCY DKT. NO. S525111 (MIDDLESEX COUNTY BD. OF SOC. SVCS.)

Petitioner appeals the Respondent Agency's termination of Emergency Assistance ("EA") based upon non-compliance with the Service Plan ("SP"). Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On October 31, 2014, the Honorable Leland S. McGee, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents. On November 3, 2014, the ALJ issued an Initial Decision which affirmed the Agency determination.

Neither party submitted exceptions.

As the Director of the Division of Family Development, Department of Human Services, I independently reviewed the record and hereby REVERSE the Initial Decision and the Agency determination.

Petitioner receives Work First New Jersey/Temporary Assistance for Needy Families ("WFNJ/TANF") and Supplemental Nutrition Assistance Program ("SNAP"), f/k/a the Food Stamp Program, benefits. The WFNJ assistance unit and SNAP household consist of Petitioner, her partner, and their 12 year-old child.

Petitioner moved from North Carolina to New Jersey in 2013. From October 2013 through at least January 2014, Petitioner lived in a private shelter. In early 2014, the Agency granted WFNJ/TANF and EA in the form of a motel placement.

In August 2014, the Agency identified a unit with rent of \$1,275.00. In September, Petitioner identified a unit with rent of \$1,400.00. The rent for each prospective unit was less than the Fair Market Rent ("FMR") of \$1,495.00, but more than the Agency's previously suggested target rent of \$900.00. There is no evidence how the Agency determined the suggested target rent.

The prospective, FMR, and suggested target rents are all significantly more than Petitioner's actual available income of \$424.00, the amount of her WFNJ/TANF grant.

On or about September 27, 2014, and apparently for the first time, the Agency projected the assistance unit's countable income in an attempt to determine the future affordability of permanent housing. The projection in the amount of \$1,074.00 is the sum of Supplemental Security Income ("SSI") benefits for which the partner had not applied and a correspondingly reduced WFNJ/TANF grant. The projection does not reflect estimates of the partner's potential future Retirement, Survivors and Disability Insurance ("RSDI") benefits or the partially-employable Petitioner's potential future earned income.

Stated otherwise, the projection materially overstates Petitioner's current countable income and does not accurately reflect her potential income for the foreseeable future.

On September 30, 2014, the Agency asked Petitioner to document the partner's future RSDI benefits. The same date, the Agency issued an adverse action letter terminating EA based upon alleged, but unspecified non-compliance with the SP. Despite its previous suggested target rent and projection of Petitioner's countable income only days before, the Agency contends it cannot evaluate the affordability of permanent housing without documented verification of the partner's potential RSDI benefits.

On October 2, 2014, Petitioner's partner applied for SSI. There is no indication when the Social Security Administration will determine the partner's RSDI or SSI applications, and whether or to what extent it may grant or coordinate benefits. Under the circumstances, Petitioner reasonably contends she has been unable to conclusively verify the partner's future RSDI benefits.

In addition, Petitioner credibly alleges the Agency provided inconsistent information about the rental amount which would qualify her for EA. Petitioner cites the rejection of the prospective unit the Agency identified in August 2014 despite rent that was only \$200.00 less than her projected countable income, exclusive of the partner's potential future RSDI benefits.

The Agency terminated EA effective October 31, 2014, and Petitioner is now homeless.

The ALJ found the Agency did not have sufficient information to determine the affordability of prospective permanent housing. The ALJ further found Petitioner "did not realize that the [FMR] was a maximum rental assistance amount but that the apartment still had to be affordable based upon the recipient's income."

"Receipt of [EA] is contingent upon the recipient's taking reasonable steps toward resolving the emergent situation." N.J.A.C. 10:90-6.6(a). Similarly, the Agency shares responsibility to resolve the emergency situation and to assist Petitioner to secure a suitable permanent housing arrangement. Ibid.

"Failure to comply with the mandatory activities of the [SP] without good cause shall result in the termination of EA benefits for a period of six months." Ibid. Likewise, EA shall not be provided for a period of 6 months where the behavior of the adult EA applicant or recipient directly caused imminent or actual homelessness, without good cause. N.J.A.C. 10:90-6.1(c)(3)(vi).

Petitioner took reasonable steps to identify and secure permanent affordable housing, specifically including but not limited to, good faith efforts to document the partner's potential future RSDI benefits. Petitioner's uncertainty about projected countable income and affordable rent was objectively reasonable, and the Agency did not adequately determine much less timely communicate that specific information to her. Under the totality of the circumstances, there is insufficient credible evidence to support the termination of EA and the imposition of a penalty.

The Agency must rescind the penalty. Petitioner may immediately and without prejudice reapply for EA. The Agency is encouraged to assist Petitioner to obtain documentation it reasonably believes necessary to project what constitutes affordable housing, and to affirmatively identify available units which meet that criteria, preferably using an updated and more individualized SP.

For the foregoing reasons, I REVERSE the Initial Decision and the Agency determination.

Signed Copy on File
at DFD, BARA

DEC - 3 2014

Jeanette Page-Hawkins
Director