



## 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 13572-15 L.B.

AGENCY DKT. NO. GA362691 (UNION COUNTY DIVISION OF SOC. SVCS.)

Petitioner appeals from Respondent Agency's termination of Work First New Jersey/General Assistance ("WFNJ/GA") benefits, and denial of an extension of Emergency Assistance ("EA") benefits under the Housing Assistance Program ("HAP") pilot. The Agency terminated Petitioner's WFNJ/GA benefits because she had received her lifetime limit of WFNJ/GA benefits, and denied Petitioner an extension of EA benefits under HAP because she was no longer a WFNJ or Supplemental Security Income ("SSI") recipient. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On September 9, 2015, the Honorable Ellen S. Bass, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents. On September 9, 2015, the ALJ issued an Initial Decision, which reversed the Agency's action.

Exceptions to the Initial Decision were filed by the Agency on September 10, 2015.

A Reply to the Agency's Exceptions was filed by Legal Services, on behalf of Petitioner, on September 11, 2015.

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 REJECT the ALJ's Initial Decision and the AFFIRM Agency's determination.

"Eligibility for cash assistance benefits shall be limited to a lifetime total of 60 cumulative months for an adult individual." N.J.A.C. 10:90-2.3(a). "At the end of an

individual adult recipient's 60 cumulative months of receipt of cash assistance, the assistance unit shall no longer be eligible to receive [WFNJ] assistance." N.J.A.C. 10:90-2.3(a)(1). Notwithstanding, "an individual who has exhausted 60 cumulative months of [WFNJ] benefits may be eligible to reapply for and receive assistance after his or her case has been closed if he or she meets the criteria for an extension or exemption." N.J.A.C. 10:90-2.4(a)(6). In relevant part, a recipient is exempt from the 60-month cumulative lifetime WFNJ limit if a "physical or mental impairment, defect or injury prevents him or her from engaging in full-time employment for a period of 12 or more months ... on a minimum of one WFNJ/MED-1, Examination Report." N.J.A.C. 10:90-2.4(a)(3)(i).

To be eligible for HAP, one or more criteria must be met. N.J.A.C. 10:90-6.10(a)(1). One of the criteria is that the recipient can demonstrate that they have "applied for and is either pending approval or appealing a denial of Retirement, Survivors and Disability Insurance ("RSDI") and/or SSI disability benefits, which shall be supported by a MED-1 form substantiating at least 12 months of disability." N.J.A.C. 10:90-6.10(a)(1)(i). HAP provides up to 24 months of additional housing assistance. See N.J.A.C. 10:90-6.10(a).

Here, the record shows that Petitioner has received 84 months of WFNJ/GA benefits, and 38 months of EA benefits, inclusive of 20 months attributable to EA benefits under HAP. See Initial Decision at 2; see also Exhibit R-1 at 3-6.

First, the Agency denied Petitioner WFNJ/GA benefits because she had exhausted her 60-month lifetime limit for WFNJ/GA benefits, and she did not have a valid MED-1 indicating at least a 12-month disability, as required for continued WFNJ/GA eligibility, pursuant to N.J.A.C. 10:90-2.4(a)(3)(i). See Initial Decision at 2-3. Although Petitioner's MED-1 form, indicating a 12-month disability, was received by the Agency, and appeared valid on its face, upon further investigation, the Agency determined it to be invalid. *Ibid.*

Specifically, at a prior hearing concerning an extension of Petitioner's EA benefits under HAP, Petitioner initially provided the Agency with a MED-1 form indicating only a six-month disability. *Id.* at 2; see also Exhibit P-2 at 2. However, at the prior hearing Petitioner alleged that she was permanently disabled, and it was suggested that she ask her doctor to clarify her medical status. *Ibid.* Thereafter, Petitioner provided the Agency with a MED-1 form indicating a 12-month disability, and the hearing was withdrawn, with the Agency stating that it would re-activate Petitioner's EA benefits once it resolved a new issue that had arisen. See Exhibit P-9. That new issue was the termination of Petitioner's WFNJ/GA benefits due to time limits. See Exhibit P-10.

In order for Petitioner to be eligible for continued WFNJ/GA benefits, she had to provide the Agency with a MED-1 form indicating a 12-month disability. See N.J.A.C. 10:90-2.4(a)(3)(i). However, the 12-month MED-1 form Petitioner's physician completed, which was supposed to clarify that Petitioner, indeed, had a permanent disability, did nothing more than restate exactly what was documented on Petitioner's six-month MED-1 form. See Exhibits P-2 at 2, 3. Consequently, the Agency contacted Petitioner's physician for clarification, and, subsequently, testified at the hearing, that via a telephone conversation with Petitioner's physician, he stated that "he only changed his report [six-month MED-1 form] so that Petitioner would not lose housing, and on that basis alone." See Initial Decision at 2-3. However, the ALJ gave no weight to the Agency's testimony, finding that the physician's statement was hearsay, and therefore not admissible into evidence. See Initial Decision at 3; see also N.J.A.C. 1:1-15.5(b).

Regardless of Petitioner's physician's testimony, I find that Petitioner's July 21, 2015, MED-1 form, indicating a 12-month disability, does not present a more serious, progressive, or permanent disability, since the time of her previous May 6, 2015, MED-1 form, indicating a six-month disability. See Exhibits P-2 at 2, 3. Rather, both MED-1 forms merely state the same medical condition, albeit different periods of disability. *Ibid.* Additionally, it appears that Petitioner's May 6, 2015, six-month MED-1 form was an improvement in her disability status, as it decreased from a previous Med-1 Form with a 12-month period of disability, dated June 3, 2013 through June 3, 2014, to a six-month period of disability. See Exhibit P-4 at 2. Based on the foregoing, I agree with the Agency's determination that the July 21, 2015, MED-1 form, indicating a 12-month disability is invalid, and its termination of Petitioner's WFNJ/GA benefits proper.

Finally, although the record indicates that Petitioner has an SSI application pending, she does not have a valid MED-1 form indicating at least a 12-month disability, and therefore, is not eligible for an extension of EA benefits under HAP. See N.J.A.C. 10:90-6.10(a)(1)(i); see also Exhibit P-1.

By way of comment, the HAP and Housing Hardship Extension ("HHE") pilot programs expired on July 2, 2015, and no new applications for HAP or HHE are being accepted after July 6, 2015. See DFD Instruction No. 15-07-02.

By way of further comment, I note that the Agency's Exceptions indicate that, at the fair hearing, the ALJ refused to contact Petitioner's physician by telephone to provide corroborating testimony. Pursuant to the regulations applicable to contested case hearings at the Office of Administrative Law, when the testimony of the witness is significant, good cause exists for permitting a witness to testify by telephone at an administrative hearing. See N.J.A.C. 1:1-15.8(e)(2). Inasmuch as the validity of Petitioner's MED-1 form is, indeed, at issue here, and was relevant to the termination of Petitioner's WFNJ/GA benefits, I find that telephone testimony would have been proper in this case, and therefore, should have been permitted.

Also, by way of further comment, I note, again, for the benefit of Petitioner's counsel that Replies to Exceptions or Cross-Exceptions are not permitted in DFD hearings, regardless of whether such Reply is couched, as here, to be a clarification of alleged misrepresentations made by the Agency. See N.J.A.C. 1:10-18.2.

Accordingly, the Initial Decision is REJECTED and the Agency's action is AFFIRMED.

*Signed Copy on File*  
at DFD, BARA  
**SEP 24 2019**  
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Natasha Johnson  
Director