



State of New Jersey

DEPARTMENT OF HUMAN SERVICES

Division of Family Development
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Elizabeth Connolly
Acting Commissioner

Natasha Johnson
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

FINAL DECISION

OAL DKT. NO. HPW 3202-15 L.W.

AGENCY DKT. NO. GA579693 (CUMBERLAND COUNTY BD OF SOC SVCS.)

Petitioner appeals from Respondent Agency's termination of Emergency Assistance ("EA") benefits in the form of shelter placement. The Agency terminated Petitioner's EA benefits for non-compliance with her service plan and shelter rules. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On April 1, 2015, the Honorable W. Todd Miller, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony, and admitted documents.

On April 13, 2015, the ALJ issued an Initial Decision, which reversed the Agency's action. The ALJ opined that the Agency had not presented competent evidence to establish that Petitioner had violated shelter rules. See Initial Decision at 5. Petitioner denied that she had violated shelter rules, and the ALJ found her testimony to be credible. *Id.* at 2-3. As such, the ALJ determined that the Agency had wrongfully terminated Petitioner's EA benefits, and ordered continued EA benefits, with the Agency to determine most appropriate form of emergency housing required to address the needs of Petitioner. *Id.* at 5; see also N.J.A.C. 10:90-6.3(a)(1).

No exceptions to the Initial Decision were received.

As the Director of the Division of Family Development, Department of Human Services, I have reviewed the ALJ's Initial Decision and the record, and I ADOPT the ALJ's Initial Decision and REVERSE the Agency's determination.

In support of its contention that Petitioner had violated shelter placement rules, the Agency submitted two incident reports from the shelter where Petitioner was residing. See Exhibit R-1 at 26, 30. The ALJ concluded that the two reports, documenting Petitioner's recalcitrance in complying with shelter rules, did not constitute competent evidence under the Residuum Rule, N.J.A.C. 1:1-15.5(b), and therefore, could not form the basis of his decision. See Initial Decision at 4-5.

I would normally find that incident reports from a shelter, such as that included in Exhibit R-1, would normally constitute competent evidence under the Residuum Rule, N.J.A.C. 1:1-15.5(b). Such memoranda, or incident reports, are records that are made in the regular course of business, it is the regular practice of the shelter to make such reports, and they are usually made at or near the time of observation by a person with actual knowledge or from information supplied by such a person. Thus, such a document would normally constitute a hearsay exception not dependent upon the declarant's availability, see New Jersey Evidence R. 803(c)(6), and therefore not subject to the Residuum Rule. However, as pointed out by the ALJ, the incident reports in this case were based on facts relayed to shelter personnel by the person at the shelter with whom Petitioner was alleged to have had an altercation. See Initial Decision at 5. Further, the record indicates that there were no eye witnesses to the alleged altercation, who could substantiate the facts set out in the incident reports. Accordingly, the ALJ found, and I concur that the record consisted solely of hearsay against Petitioner.

Based on the foregoing, the Initial Decision is ADOPTED and the Agency's action is REVERSED.

Signed Copy on File

at DFD, BARA

MAY 19 2015

Natasha Johnson
Director