



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 16199-14 S.S.

AGENCY DKT. NO. C290612 (PASSAIC COUNTY BOARD OF SOC. SVCS.)

Petitioner appeals the Respondent Agency's termination of her Emergency Assistance ("EA") benefits in the form of shelter placement. The Agency terminated Petitioner's EA benefits for non-compliance with her service plan for failure to follow shelter rules. Because the Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On December 17, 2014, the Honorable Kelly J. Kirk, Administrative Law Judge ("ALJ"), held a plenary hearing, took testimony and admitted documents.

On December 18, 2014, the ALJ issued her Initial Decision, reversing the Agency's termination of Petitioner's EA benefits. The ALJ noted that the basis for Petitioner's termination was due to the actions of another individual, a "friend" of Petitioner's. See Initial Decision at 3-4. The ALJ found that while Petitioner's testimony, pertaining to the incidents that occurred due to Petitioner's "friend," did not seem overly persuasive, the record in the matter established that the Agency had not followed regulatory procedural mandates. See *id.* at 6. Specifically, the ALJ concluded that the Agency had not reviewed the shelter's policies and procedures with Petitioner prior to placement and furthermore, had not requested written documentation to support the termination prior to terminating Petitioner's EA. *Ibid.* Due to these procedural deficiencies, coupled with the fact that it was not Petitioner's own conduct, but rather the conduct of someone else, that resulted in her ejection from the shelter placement, the ALJ determined that the Agency had improperly terminated Petitioner's EA. See *id.* at 6-7.

No Exceptions to the Initial Decision were filed by either party.

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

The purpose of EA is to meet the emergent needs of public assistance recipients, such as imminent homelessness, so that the recipient can participate in work related activities without disruption in order to continue on the path to self-sufficiency. See N.J.A.C. 10:90-6.1(a).

N.J.A.C. 10:90-6.3(c) provides, "EA shall not be provided to adult recipients who are terminated without good cause from an EA placement ... for a period of six months when the termination is the result of the recipient's actions, which may include, but are not limited to, the actions identified in (c)1 through 6 below ... Threatening and/or disruptive behavior that affects the operations of the shelter or the safety of other residents... Violation of health and safety policies"

The record indicates that the incidents which occurred in this case were the result of the actions of Petitioner's "friend." Based upon the factual summary of the incidents contained in the record, see Initial Decision at 3-4, these occurrences were not only disruptive to the operation of the shelter, but they threatened the safety of other residents. See also Exhibit R-1 at 3-4. However, as these incidents were not due to Petitioner's own conduct, I am inclined to concur with the ALJ's determination that the termination of Petitioner's EA was inappropriate.

Petitioner is put on notice that any further violation of placement/shelter rules will result in not only termination of EA benefits, but also imposition of a six month period of ineligibility for EA benefits as outlined above.

By way of comment, I would normally find that a memorandum from a shelter, such as that included in Exhibit R-1, would normally constitute legally competent evidence, in and of itself, based upon a hearsay exception. 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 applicable to hearsay evidence. See N.J.A.C. 1:1-15.5(b). However, as pointed out by the ALJ, the memorandum in this case was created almost two weeks after Petitioner's termination, and therefore, not "made at or near the time of observation" as required.

HPW Number : 16199-14

Case Number : C290612

16-90

Page 3

Based upon the foregoing, I hereby ADOPT the Initial Decision in this matter and REVERSE the Agency's determination in this matter.

Signed Copy on File
at DFD, BARA

DEC 31 2014

Jeanette Page-Hawkins
Director