



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 16424-14 V.T.

AGENCY DKT. NO. GA402319 (ESSEX COUNTY DIVISION OF WELFARE)

Petitioner appeals from Respondent Agency's termination of Work First New Jersey/General Assistance ("WFNJ/GA") benefits. The Agency terminated Petitioner's WFNJ/GA benefits because he had resources of \$1,200 and he had not applied for United States ("U.S.") citizenship. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law for a hearing. On December 24, 2014, the Honorable Mumtaz Bari-Brown, Administrative Law Judge ("ALJ"), held a plenary hearing and took testimony. No documents were admitted into evidence. On January 28, 2015, the ALJ issued an Initial Decision, which affirmed the Agency's action.

Exceptions to the Initial Decision were filed by Counsel on behalf of the Petitioner on February 10, 2015. The Exceptions assert facts and include documents not entered into evidence before the ALJ, in contravention of N.J.A.C. 1:1-18.4(c) ("Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions."). Specifically, Petitioner provided specific dates that appear relevant to this matter, and submitted copies of documents indicative of Petitioner's alien status.

As the Director of the Division of Family Development, Department of Human Services, I have considered the record in this matter and the ALJ's Initial Decision, and having made an independent evaluation of the record, I REJECT the Initial Decision, REVERSE the Agency's action, and REMAND the matter back to the Agency for further evaluation and determination, based on the following discussion.

The purpose of the WFNJ Program is to assist needy individuals by providing them with transitional support that enables them to become self-sufficient and avoid the need for public assistance in the future. N.J.S.A. 44:10-56. GA is a component of WFNJ that provides assistance to adults without dependent children. N.J.A.C. 10:90-1.1(b). In evaluating an individual's eligibility for WFNJ/GA benefits, all countable income and resources, unless exempt, must be considered. N.J.A.C. 10:90-3.1(a), -3.9(a), -3.10(a), -3.19 and -3.20. Resources include bank accounts, cash and contributions of support that are available to meet the needs of the individual. N.J.A.C. 10:90-3.10(b). Resources that are exempt from the financial eligibility determination are defined at N.J.A.C. 10:90-3.20. In order to remain eligible for WFNJ/GA benefits, the WFNJ/GA recipient's total countable income must be equal to or less than the maximum benefit payment level for the size of the assistance unit. The benefit level for a WFNJ/GA assistance unit that consists of one individual is \$140 per month. See N.J.A.C. 10:90-3.5.

Pursuant to N.J.A.C. 10:90-2.10, "Only those persons who are United States citizens or eligible aliens shall be eligible for WFNJ/GA benefits.

In relevant part, N.J.A.C. 10:90-2.3(a)(3)(i) states, "Eligible aliens who are single adults or couples without dependent children may receive benefits until they meet the minimum residency requirements to apply for citizenship in accordance with INS rules, which include but are not limited to: . . . continuous residence within the United States, after being lawfully admitted for permanent residence, for at least five years immediately preceding the date of filing a petition for naturalization. . . ." With a few exceptions, "[a]fter residency requirements for citizenship are met, aliens who have applied for citizenship shall not receive benefits for more than six months unless they attain citizenship, or pass the language and civics component [], and are awaiting a final determination delayed through no fault of their own" N.J.A.C. 10:90-2.3(a)(3)(ii). However, "[a]n alien who meets the requirements for residency and citizenship on or after August 22, 1996, but does not initiate the naturalization process shall not be eligible to receive benefits." N.J.A.C. 10:90-2.3(a)(3)(iv).

The record indicated that Petitioner received WFNJ/GA benefits until August 11, 2014, when his WFNJ/GA benefits were terminated. See Initial Decision at 2. Also, according to the record, Petitioner moved to the U.S. in 1989 and became a permanent resident in 2009. Ibid. The record further indicated that the Agency terminated Petitioner's WFNJ/GA benefits because he had resources of \$1,200 and he had not applied for U.S. citizenship. Ibid.

However, the record is devoid of any evidence indicating the exact dates relevant for determining Petitioner's eligibility for WFNJ/GA benefits, pursuant to N.J.A.C. 10:90-2.3(a)(3)(i). Specifically, the record only states that Petitioner became a permanent resident in 2009. However, it is important to know the exact date in order

to calculate whether, at the time Petitioner's GA benefits had terminated, he indeed met the five-year time requirement to apply for U.S. citizenship. See N.J.A.C. 10:90-2.3(a)(3)(ii).

Additionally, the record is devoid of any evidence indicating the nature of Petitioner's \$1,200 resource. In determining continued WFNJ/GA eligibility it is important to know if it is a one-time lump sum or income which effects WFNJ/GA eligibility. See N.J.A.C. 10:90-3.18(c)(1).

As there were no documents admitted into evidence, and no testimony sufficient to determine Petitioner's continued eligibility for WFNJ/GA benefits, as discussed above, I reject the ALJ's decision and remand the matter back to the Agency for a further evaluation and determination of Petitioner's eligibility for continued WFNJ/GA benefits. Although I am not permitted to consider documents as evidence that were not submitted at the hearing for consideration by the ALJ. See N.J.A.C. 1:1-18.4(c), the documents submitted as part of the Petitioner's Exceptions need to be considered in this matter in order to render a full and complete determination of Petitioner's eligibility for continued WFNJ/GA benefits.

Further, the record indicated that Petitioner left the U.S. in 2013, and stayed for about a month. See Initial Decision at 3. The ALJ opined that because Petitioner failed to advise the Agency that he was leaving the State, in contravention of N.J.A.C. 10:90-2.13(c), the Agency properly terminated his WFNJ/GA benefits. See Initial Decision at 4. Regardless, the record indicated that the Agency continued to provide WFNJ/GA benefits to Petitioner through August 11, 2014, and pursuant to N.J.A.C. 10:90-2.13(a), "[a] recipient unit may leave the State for up to a one month period with no resultant effect upon eligibility or payment." Accordingly, I find that since Petitioner left the State in 2013, was gone for about a month, and the Agency continued to provide WFNJ/GA benefits through August of 2014, that it is now improper for the Agency to terminate Petitioner's WFNJ/GA benefits based on N.J.A.C. 10:90-2.13(c). Moreover, there is no evidence in the record to indicate when the Agency became aware of Petitioner leaving the State, or if they sent the required notice to Petitioner advising of any adverse action concerning his benefits when they did learn of the fact. See N.J.A.C. 10:90-2.13(f).

Accordingly, this matter is REMANDED back to the Agency for action consistent with this Decision. If the Agency determines that the Petitioner is not eligible for WFNJ/GA benefits, the Agency shall provide Notice in accordance with N.J.A.C. 10:90-9.1 et seq., and the Petitioner shall retain the right to request a Fair Hearing.

By way of comment, the Petitioner is advised that all relevant documentation in this matter is to be provided to the Agency.

By way of further comment, the Agency is reminded of its responsibilities in representation and presentation of a matter at a plenary hearing before an ALJ, pursuant to N.J.A.C. 10:90-9.12(b).

Based on the foregoing, the Initial Decision in this matter is REJECTED, the Agency's determination is REVERSED, and this matter is REMANDED back to the Agency for further evaluation and determination.

APR - 6 2015

Signed Copy on File
at DFD, BARA

Natasha Johnson
Director