

P.P.M., on behalf of minor child, S.S., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE SOUTH :
ORANGE-MAPLEWOOD SCHOOL DISTRICT, : DECISION
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioning uncle challenged the Board’s residency determination that his niece, S.S., was not entitled to a free public education in the District.

The ALJ concluded that S.S. resided in the District with her uncle solely for the purpose of receiving a free public education there. Petitioner failed to demonstrate that S.S.’s parents, who relocated to Florida, were not capable of supporting or caring for her due to family or economic hardship. The mother provided medical coverage and the father still claimed S.S. as a dependent. Moreover, the parents have another child living with them and they indicated that S.S. would be moving in with them during the summer. The ALJ ordered the petition denied and ordered petitioner to reimburse the Board \$7,611.87 in tuition for the period of S.S.’s ineligible attendance in the District.

Based on the record and the ALJ’s credibility assessments (no transcript was provided), the Commissioner adopted the findings and determination in the Initial Decision as his own. The Commissioner directed that petitioner reimburse the Board the tuition owed.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

July 31, 2003

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner’s exceptions and the Board’s reply were submitted in accordance with *N.J.A.C.* 1:1-18.4.

In his exceptions, petitioner challenges the factual findings of the Administrative Law Judge (ALJ), asserting that the ALJ ignored crucial evidence that demonstrated family or economic hardship. In this connection, petitioner avers that he did not have the resources to enable S.S.’s parents to fly to New Jersey from Florida to provide testimony, that his testimony was unfairly portrayed and that the Board’s affidavits and forms relied upon by the ALJ were misleading and inadequate. The assessment of tuition, petitioner therefore argues, is “unconscionable.” (Petitioner’s Exceptions at 4)

The Board, in reply, objects to petitioner’s attempts to insert facts into the record which contradict his testimony under oath. Contrary to petitioner’s assertion, the Board argues that “[i]t is apparent from pages 8 and 9 of the Initial Decision that Judge Giordano considered Petitioner’s testimony, but was not persuaded by it, believing it to be tailored to address the deficiencies in the application.” (Board’s Reply at 2) The Board also asserts that petitioner issues “spurious allegations” with respect to it residency forms and procedures, which, the Board maintains, are consistent with case law and State regulation. (*Id.* at 2, 3) Finally, the Board argues that petitioner cannot object to the

amount of tuition ordered by the ALJ, since, “[t]he annual tuition rate is set by the Board and approved by the Department of Education.” (*Id.* at 3) Moreover, as the Board points out, the method for determining the amount of tuition which is owed in such matters is set by statute. The Board, therefore, urges that the Commissioner adopt the Initial Decision in its entirety.

Upon careful and independent review of the record in this matter, and based on the ALJ’s credibility assessments, *N.J.S.A.* 52:14B-10(c), the Commissioner finds no cause to disturb the factual findings and legal conclusions of the ALJ. In so doing, the Commissioner underscores that challenges to the factual findings rendered by an ALJ require the objecting party to provide the Commissioner with relevant portions of the transcript of the hearing in order to permit him to assess the merits of those exceptions. *In re Morrison*, 216 *N.J. Super.* 143, 157-158 (App. Div. 1987) Here, however, no transcript was provided.

Accordingly, the Initial Decision of the ALJ is adopted for the reasons expressed therein, and the within Petition of Appeal is dismissed. The Commissioner directs that petitioner reimburse the Board for tuition in the amount of \$7,611.87 for the attendance of S.S. in the District from November 11, 2002 until the end of the 2002-2003 school year, as set forth in the Initial Decision.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 31, 2003

Date of Mailing: July 31, 2003

* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*