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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2366-14T2

A.B.,

Petitioner-Appellant,

v.

DEPARTMENT OF HUMAN SERVICES,
DIVISION OF FAMILY DEVELOPMENT,

Respondent-Respondent.

Submitted November 29, 2016 – Decided March 29, 2017

Before Judges Rothstadt and Sumners.

On appeal from the Department of Human
Services, Division of Family Development,
Docket No. C643980.

A.B., appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa H. Raksa,
Assistant Attorney General, of counsel; John
F. Regina, Deputy Attorney General, on the
brief).

PER CURIAM

Appellant A.B. challenges the final agency action of the
Department of Human Services (DHS), Division of Family Development

(DFD), denying her application for Emergency Assistance (EA) in the form of temporary rental assistance pursuant to N.J.A.C. 10:90-6.1 to -6.10. For the reasons that follow, we affirm.

A.B. owns and resides in a one-bedroom home in the Township of Maplewood, located in Essex County. When she became unemployed, she fell behind in making her mortgage payments and applied for EA through the Maplewood Township Municipal Welfare Department (Agency).¹ A.B.'s application was denied on the ground that her monthly mortgage payment of \$1,956.83 exceeded the \$1059 fair market rent (FMR) for a one-bedroom home in Essex County.² She requested a Fair Hearing, but her request was withdrawn because she anticipated starting a new job.

When the job did not materialize, A.B. re-applied for EA. The Agency denied her request for the same reasons. A.B. requested a Fair Hearing, and the matter was transferred to the Office of Administrative Law (OAL), where it was deemed a contested case. See N.J.S.A. 52-14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

¹ At the time, she was already receiving other benefits, Work First New Jersey/General Assistance and Supplemental Nutrition Assistance Program Benefits.

² It is unclear if A.B. lived in a one-bedroom or two-bedroom house because she testified that one of the bedrooms was "tiny" and did not "have a closet." Nevertheless, her monthly mortgage exceeded the FMR for a four-bedroom home.

Appearing at the OAL hearing, Agency Director Sandra Bartlett testified she was informed by the bank that owns A.B.'s mortgage, that A.B. was seeking a resolution to avoid foreclosure of her home. Thus, Bartlett maintained that A.B. was not in an emergency because her home was not in foreclosure and she was still living there. At the time of the hearing, A.B.'s delinquent mortgage payments totaled \$11,736. A.B., appearing without counsel, contended that she was entitled to EA in order to make six months of mortgage payments.

In his initial decision, the ALJ upheld the Agency's denial of EA to A.B. He found that A.B. "lives in a house she owns and [has] monthly mortgage payments of [\$1956.83, and] [s]he is not in foreclosure." Citing N.J.A.C. 10:90-6.4(b)1, the ALJ reasoned that,

[r]etroactive mortgage payments are a form of authorized EA for up to three calendar months of retroactive payments, 'if it will prevent actual eviction or foreclosure[,]'. . . . however, as [A.B.] is in default \$11,736 for . . . a six month period, mortgage payments for three months would be . . . a gift . . . [as A.B.] would remain in default for [an additional] three months[,] which could engender a foreclosure action [and therefore, n]o good purpose would be served by the award.

Consequently, the ALJ determined that "there is no emergency to be addressed[.]"

A.B. appealed the initial decision to the DFD Director, who subsequently issued a final agency decision and order adopting the initial decision denying A.B.'s EA application. The Director determined that A.B.'s situation did not constitute an emergency under N.J.A.C. 10:90-6.1, which authorizes EA when there is "an actual or imminent eviction . . . and the assistance unit is in a state of homelessness or imminent homelessness[.]" The Director agreed with the Agency's determination that A.B. was not entitled to EA "because her monthly mortgage payment of \$1,956.83 exceeds the applicable FMR of \$1,059" per month for a one-bedroom residence in Essex County.

Before us, A.B. maintains that she is working with the bank to modify her mortgage payments, but that her home is still in the process of foreclosure. She argues that she is entitled to EA to pay for her delinquent mortgage payments because it will prevent actual or imminent eviction. We are not persuaded.

Our review of an agency decision is limited. R.S. v. Div. of Med. Assistance & Health Servs., 434 N.J. Super. 250, 260-61 (App. Div. 2014). "An administrative agency's decision will be upheld 'unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" Id. at 261 (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 25 (2011)).

"Deference to an agency decision is particularly appropriate where the interpretation of the [a]gency's own regulation is in issue.'" Ibid. (quoting I.L. v. N.J. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 389 N.J. Super. 354, 364 (App. Div. 2006)). "Nevertheless, 'we are not bound by the agency's legal opinions.'" A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 340 (App. Div.) (quoting Levine v. State Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div. 2001)), certif. denied, 200 N.J. 210 (2009). "Statutory and regulatory construction is a purely legal issue subject to de novo review." Ibid. (citing Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

We have considered A.B.'s contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant a discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons expressed in the DFD Director's decision, which is supported by sufficient credible evidence in the record, Rule 2:11-3(e)(1)(D), and is not arbitrary, capricious, or unreasonable.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION