

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1120-16T4

R.E.,

Petitioner-Appellant,

v.

WARREN COUNTY DIVISION OF
TEMPORARY ASSISTANCE AND
SOCIAL SERVICES,

Defendant-Respondent.

Submitted November 18, 2016 – Decided January 12, 2018

Before Judges O'Connor and Whipple.

On appeal from the Department of Human Services, Division of Family Development, Docket No. 14643-16.

Legal Services of Northwest Jersey, attorneys for appellant (Matthew R. Bradley, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa D. Schaffer, Assistant Attorney General, of counsel; Theodore Martens, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner R.E. appeals from the Division of Family Development, New Jersey Department of Human Services' (DHS) final agency decision. That decision rejected the Administrative Law Judge's (ALJ) initial decision to reverse respondent Warren County Division of Temporary Assistance and Social Services' determination to deny petitioner emergency assistance benefits in the form of temporary rental assistance. We reverse.

I

The facts are not well presented by the parties, a deficiency compounded in part by the parties' failure to provide the appropriate citations, as required by Rule 2:6-2(a)(5), to the factual allegations asserted in their respective briefs. However, we discern the following from the record.

In August 2016, petitioner was renting an apartment in Warren County. At that time, she was residing with her two children, then eleven and eighteen years of age. It is not disputed petitioner suffers from various emotional and mental health disorders that impair her ability to work, and that her oldest child is autistic.

Petitioner's husband and the father of the two children did not live in petitioner's household but, until August 2016, was paying for petitioner's rent. He did not provide any other form

of support for either petitioner or the children. Petitioner's rent at that time was \$1350 per month. The only benefits petitioner received at that time were \$424 per month through the Temporary Assistance to Needy Families (TANF) program and \$511 per month in food stamps.

On August 2, 2016, petitioner applied for emergency assistance benefits through respondent, pursuant to the Work Force New Jersey (WFNJ) program. See generally N.J.A.C. 10:90-6.1 to -6.10. This program is administered by county welfare agencies pursuant to DHS' statewide standards and procedures. Among other things, petitioner sought emergency assistance benefits "due to family violence concerns." See N.J.A.C. 10:90-20.4.

As part of the application process, petitioner was required to submit to a domestic violence risk assessment. N.J.A.C. 10:90-20.1(b)(1). Such assessment "includes a safety and service plan strategy consistent with the identified needs and safety concerns of the individual, as determined by the . . . individual and the . . . agency's risk assessor." N.J.A.C. 10:90-20.1(b)(1)(i).

Following such evaluation, respondent's domestic violence assessor determined petitioner was in:

high danger because her [husband] has been physically, emotionally, verbally, sexually, and financially abusive throughout the marriage. The client has tried to leave her abuser several times, but he has followed her and found her location every time. The abuser currently has access to the client and her children and will come in and out of their home unannounced. The client suffers from severe effects of the trauma she has experienced and is currently seeking the support and help that she needs, in order to become financially independent and attempt to leave her location again. The client would be placed in more danger if she were not granted the waivers [sought] because she is in need of more time and assistance to recover from the effects of her trauma and move safely away from the abuser. Doing so quickly, in the past, has angered the abuser and escalated the violence.

As a result of this assessment, respondent offered to place petitioner and the children in a domestic violence shelter.

Petitioner rejected such offer and, as a result, respondent issued petitioner a notice stating she was ineligible to receive emergency assistance or temporary rental assistance benefits. The stated ground was petitioner refused to "comply with this agency's offer to provide safe housing through Emergency Assistance. We offered to place you at [a domestic violence shelter] and we offered to house you out of county."

Petitioner appealed respondent's determination and the matter was transferred to the Office of Administrative Law for a hearing as a contested case. At the outset of the hearing, the

ALJ clarified the relief petitioner sought was emergency assistance in the form of rent for August, September, October and November of 2016, or a total of \$4050 in benefits.

The material testimony petitioner provided was as follows. Petitioner suffers from paranoia, agoraphobia, germaphobia, post-traumatic stress syndrome, generalized anxiety, and depression. These afflictions are debilitating and cause her to suffer significant anxiety whenever she leaves her current apartment. Medications have not helped. She is unable to work and was dependent upon her husband to pay her rent. It was not clear what efforts she made to collect child support from him. She commented her landlord obtained a judgment for possession that permitted the landlord to obtain a warrant of removal in November 2016.

Petitioner clarified that, contrary to what was set forth in the respondent's domestic violence assessor's summary, her husband had never been physically violent but he had threatened her with physical violence and had been verbally abusive. She explained she rejected respondent's offer to place her and the two children in a domestic violence shelter because a shelter would provide her, the children, and a service animal only one room in which to live. She feared the oldest child's autistic condition would deteriorate and the youngest child, who has

depression, would also suffer if they were uprooted from their current home and confined to living in one room with a sibling and petitioner.

In addition, if living in a shelter, petitioner would not be permitted to disclose to anyone, including her husband, the shelter's location. She claimed if her husband did not know where she and the children were living, he would become so angry that, when she ultimately emerged from the shelter, he would harm her. Further, in her view, obtaining a domestic violence restraining order would not inhibit her husband from taking retaliatory action. Thus, because moving into a shelter would expose her to and not protect her from violence, petitioner believed it best for her and the children to remain in their current home.

A representative of respondent (representative) briefly testified¹, stating respondent believed it in petitioner's best interests to place her and the children in a shelter for her protection. The representative testified petitioner was informed she and the children might be placed in a shelter where they would have larger accommodations, but petitioner

¹ The ALJ's written decision makes reference to two of respondent's representatives testifying, but the transcript reveals only one testified.

nevertheless maintained she did not want to be placed in a shelter.

The ALJ found in favor of petitioner. The court found her credible and her reasons for wanting to stay in her home "well thought out." The ALJ acknowledged respondent's offer to place petitioner in a shelter was well-intentioned, but that such plan was unworkable and reversed respondent's determination to deny "the continuation of petitioner's [emergency assistance/temporary rental assistance]."

In support of his disposition, the ALJ cited N.J.A.C. 10:90-6.3(a)(1) and (6). These two provisions state in pertinent part:

(a) The county . . . is authorized to provide the following kinds of assistance to meet emergency situations when there is no other source of support available: payment for emergency shelter and emergency temporary housing and allowances for permanent living arrangements including, but not limited to, allowances for retroactive rental, . . . and advance rent.

(1) The county . . . agency shall determine the most appropriate form of emergency housing which is required to address the need and authorize payment of the costs of adequate emergency shelter/housing, taking into consideration individual/family circumstances and services provided. Such emergency housing shall include placement in shelters; hotel/motel placement; transitional housing; or

shelters for victims of domestic violence.

. . . .

(6) If appropriate for the individual/family situation, WFNJ recipients shall be notified that temporary rental assistance (TRA) may be provided, when the recipient is facing eviction, in order to maintain current permanent housing which had previously been affordable but which is no longer affordable . . . and it is anticipated that such housing will again become affordable; or when it is determined that maintaining the unit in the current housing arrangement is both the least costly alternative and serves to preserve the family structure while the search for affordable housing continues. TRA is the preferred form of emergency housing assistance in all situations, as appropriate.

The ALJ acknowledged respondent had the authority to determine the form of emergency housing an applicant can receive, but found respondent's failure to properly assess petitioner's particular circumstances unreasonable.

Specifically, the ALJ noted respondent did not consider whether placing the family in a domestic violence shelter served to preserve the family structure, given the concern a change in location would exacerbate both petitioner's and the children's mental and emotional conditions, not to mention incite petitioner's husband to inflict violence. Thus, the ALJ

concluded, respondent's determination petitioner was not entitled to emergency assistance was not supported by the evidence.

The Director of the Division of Family Development issued DHS's final agency decision. She rejected the ALJ's initial decision and affirmed respondent's determination to deny petitioner emergency assistance benefits. The Director found that by placing petitioner and the children in a shelter or "safe housing" in another county would have provided her the best protection against her husband's violence and, although there would be drawbacks to living in a shelter, such housing would be merely temporary. In the Director's view, after meeting petitioner's primary concern she be physically safe from her husband, petitioner's "other issues of concern" could have been addressed. The Director noted,

I find that in keeping with the regulations, [respondent] took the whole of [p]etitioner's circumstances into consideration, as well as the [domestic violence] risk assessment when it offered her housing in a [domestic violence] shelter, or safe housing in another county. . . . As such, I find that [p]etitioner's refusal of both forms of housing offered warranted [respondent's] denial of [emergency assistance] benefits.

This appeal ensued.

Petitioner contends the Director erred when she rejected the ALJ's initial decision and affirmed respondent's determination, arguing she is entitled to emergency assistance benefits in the form of temporary rental assistance.

Respondent argues it was appropriate to deny petitioner benefits because she was offered but refused adequate housing. Respondent argues N.J.A.C. 10:90-6.3(a)(1) provides it wide discretion to determine what emergency assistance benefits can be awarded and, because respondent's assessment found petitioner at high risk for domestic violence, respondent's decision to offer placement in a domestic violence shelter was reasonable.

In general, we accord deference to administrative agencies in their implementation of statutes and regulations. Aqua Beach Condo. Ass'n v. Dep't of Cmty. Affairs, 186 N.J. 5, 16 (2006). However, at times we must intercede where an agency's decision is arbitrary or capricious, or is not founded upon substantial credible evidence. George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 27 (1994) (citing Campbell v. Department of Civil Serv., 39 N.J. 556, 562 (1963)). In addition, like all matters of law, we apply de novo review to an agency's interpretation of a statute or case law. Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002) (citing Balsamides v. Protameen Chem., Inc., 160 N.J. 352, 372 (1999)).

Emergency assistance benefits may be provided as a "supportive service to meet the emergent needs" of persons who receive public assistance paid through the WFNJ/TANF program. N.J.A.C. 10:90-6.1(a); see also 42 U.S.C. §§ 601 to -619 (authorizing federal grants to states for temporary assistance to needy families); N.J.S.A. 44:10-55 to -78 (establishing, pursuant to federal legislation, the WFNJ program to be implemented by county welfare agencies). Among other things, the WFNJ program is aimed at promoting "[p]ersonal and family security and stability, including the protection of children and vulnerable adults." N.J.S.A. 44:10-56(f).

Respondent is authorized to provide emergency assistance in the form of rent when there is no other source of support available. N.J.A.C. 10:90-6.3(a). Although the county ultimately determines the most appropriate form of emergency housing for an applicant, respondent is required to take into consideration a family's circumstances. N.J.A.C. 10:90-6.3(a)(1). Further, if an applicant is seeking benefits because he or she is at risk for being a victim of domestic violence, respondent's assessment must include "a safety and service plan strategy consistent with the identified needs and safety concerns of the individual, as determined by the . . .

individual and the . . . agency's risk assessor." N.J.A.C.
10:90-20.1(b)(1)(i).

There does not appear to be any dispute petitioner required and qualified for emergency assistance; it is the kind of assistance to which she was entitled that is in controversy. Petitioner claims her circumstances entitle her to assistance in the form of rent so that she can remain in her apartment. Her contention being in a shelter would induce her husband to inflict violence upon her, not to mention cause her children harm, was not refuted by respondent during the hearing. However, respondent maintains the best form of emergency assistance for petitioner was that she be placed in a shelter, where she would be protected from her husband.

In our view, the DHS' decision to reject and reverse the ALJ's initial decision was unreasonable in light of the evidence adduced during the hearing, which was not even challenged by respondent. Although seemingly counterintuitive that petitioner would not want to enter into a shelter in order to gain protection from her husband, she provided a reasonable explanation why entering a shelter was not a viable alternative to remaining in her apartment.

While respondent does have the authority to determine the form of emergency assistance an applicant shall receive,


respondent must take into consideration a family's circumstances, see N.J.A.C. 10:90-6.3(a)(1). Further, if an applicant is seeking benefits because he or she is or risks becoming a victim of domestic violence, respondent must also consider the needs and safety concerns as identified by the applicant individual, not just the concerns of the agency's risk assessor. N.J.A.C. 10:90-20.1(b)(1)(i).

Here, respondent failed to appreciate petitioner's needs, safety concerns, and her family circumstances, warranting the reinstatement of the ALJ's determination. In our view, petitioner identified and respondent ignored legitimate reasons why she and the children needed to stay in her current home. The credible evidence indicates she was entitled to those temporary rental assistance benefits to which an applicant who remains in her home is entitled. Accordingly, the final decision of the DHS is reversed, and the matter remanded for the entry of an administrative order implementing the ALJ's findings and recommendations.

To the extent we have not expressly addressed a party's argument, it is because such argument was without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed and remanded. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION