R.M.,  
Petitioner  
v.  
Hudson County Welfare Agency,  
Respondent.

Initial Decision: March 8, 1990  
Final Agency Decision: April 2, 1990  
Approved for Publication: May 15, 1990

SYNOPSIS

Petitioner's application for emergency assistance was denied by the Hudson County welfare agency. He requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case.

R.M. was 62 years old and unable to work because of a back injury. After his injury, R.M. received General Assistance (GA) and emergency shelter assistance (EA) through the Jersey City municipal welfare department. When R.M. began receiving Social Security retirement (SSA) benefits, the municipality discontinued his GA and EA assistance. R.M. then applied to the Hudson County welfare agency for EA pursuant to N.J.A.C. 10:83-1.2. The county denied his application because EA assistance under N.J.A.C. 10:83-1.2 is limited to recipients of SSI. R.M.'s application for SSI on grounds of disability had been denied.

The administrative law judge assigned to the case concluded that the regulation's silence as to the EA eligibility of SSA recipients did not mean that SSA recipients were to be automatically excluded from EA eligibility. He reasoned that in the context of the State commitment to assist the homeless, R.M. should not remain without assistance because his specific situation did not seem to be covered by the regulations. The judge thus recommended that the county welfare agency be directed to provide emergency assistance.

On review, the Director of the Division of Economic Assistance rejected this initial decision. The Director found that R.M. did not qualify for emergency assistance under any of the applicable regulations, which at the county level limit EA to those who are eligible for either Aid to Families with Dependent Children (AFDC) or SSI benefits, and at the municipal level limit EA to persons eligible for General Assistance. Because R.M. was not eligible for AFDC, SSI
or GA, he could not be eligible for EA. The Director accordingly affirmed the county welfare agency’s denial of R.M.’s application. The Director, however, stated that it would be proper for the county welfare agency to help R.M. find housing assistance through other agencies, including public and private shelters.

Before ruling on the merits of the EA claim, the Director ruled that the Division’s failure to issue a final decision within the three-day period prescribed by N.J.A.C. 1:10-12.2 did not result in the initial decision’s becoming the agency final decision by default. The Director noted that while the Administrative Procedure Act and the OAL rules provide for such a result after 45 days, neither directs such a result after any lesser period. The Director held alternatively that in any event the decision could be modified pursuant to the Division’s inherent authority of administrative review.

David Sciarrra, Deputy Public Advocate, for petitioner (Thomas S. Smith, Jr., Acting Public Advocate, attorney)
Rody J. Costanzo, Assistant County Counsel, for respondent

MASIN, ALJ:

This emergency shelter assistance hearing came before Administrative Law Judge Jeff S. Masin on March 7, 1990, at the Office of Administrative Law in Newark. The facts were not in dispute. The matter turns upon consideration of statutes, regulations and case law concerning the intent and scope of emergency assistance.

R.M. is 62 years old. Prior to May of 1989, he worked as a dishwasher in Jersey City. In May of 1989, while carrying dishes, he suffered a back injury and has been unable to work since that time. He applied for worker’s compensation and for social security disability under the SSI program. Since Mr. M. had no other sources of income, he became eligible for general assistance (GA) benefits and received $210 a month from the Jersey City Municipal Welfare Agency. That agency found him to be incapable of employment. Since Mr. M. was homeless, Jersey City gave him emergency shelter assistance benefits pursuant to the General Assistance Program. He resided in a rooming house in West New York. On September 13, 1989, he was advised by the Social Security Administration that he would be eligible for retirement benefits under social security (SSA) as of January 1990. On February 3, 1990, he received his first check in the amount of
$312, for the month of January 1990. He was also advised that his monthly check thereafter would be $298 a month. On February 15, Mr. M. was notified by the Jersey City Municipal Welfare Agency that his general assistance benefits would be terminated because he was no longer eligible, due to the receipt of SSA benefits. His emergency shelter assistance was also terminated. He once again became homeless. Since February 1, he has been staying with friends or living outside on a roof.

On December 21, 1989, Mr. M. was notified by the Social Security Administration that his application for SSI had been denied, as they did not deem his back injury to be severe enough to qualify him as disabled for purposes of the Social Security Act. As of the time of this hearing, Mr. M. had not filed an appeal of that determination. The deputy public advocate, who first met Mr. M. on the morning of the hearing, advised the administrative law judge that he intended to look into the possibility of an appeal on Mr. M.'s behalf.

Because he was destitute and homeless, Mr. M. applied to the Hudson County Welfare Agency for emergency assistance on February 21, 1990. He was denied such assistance pursuant to a letter issued by the agency on February 21, in which Mr. Henry Goscinski, supervisor, wrote "under emergency regulations we can only help SSI recipients and you do not fall into this category."

The agency based this determination upon its reading of N.J.A.C. 10:83-1.2, which is the Special Payments Handbook for the Aged, Blind and Disabled. Subsection (a) reads:

'Emergency assistance' for recipients of SSI may be authorized by the county welfare agency during the period of 30 consecutive days immediately following the occurrence of an emergency as defined in this section. Authorization shall be for payments issued to or for an eligible individual . . . living alone . . . when such person receives monthly benefits under the SSI program. Individuals in the Medicaid Only program are not eligible for emergency assistance.

Since the above regulation is silent as to recipients of SSA, the agency concluded that it had no authorization to provide emergency assistance for Mr. M. since he was an SSA, rather than an SSI recipient. It is from that determination that Mr. M. appeals.

The public advocate first argues that a reading of various sections of Title IV of the New Jersey Statutes, the "Poor Law," indicates that despite the lack of any reference in the regulation to SSA recipients, it was the statutory intention to provide for individualized consideration of the "conditions existing in each case, in accordance with the
rules and regulations of the State division. . . .” N.J.S.A. 44:7-12. Thus, a blanket determination that merely because an individual receives SSA rather than SSI benefits, without consideration of whether that SSA recipient may in fact be disabled, perhaps despite the SSI determination, is improper.

Secondly, the public advocate argues that a distinction which prohibits eligibility for SSA recipients as opposed to those receiving SSI is constitutionally infirm, violative of equal protection of the provisions of the Federal and State constitutions.

Counsel for the welfare agency denies any authority under statute or regulation for emergency assistance to be provided to SSA recipients. He sees nothing constitutionally improper about such a distinction. In addition, through the administrative supervisor of the agency, who also appeared to assist him in representing the agency, he argues that the categories of assistance which were subsumed in SSI were the traditional old age (above 65 years), blind and disabled, who had been protected by the provisions of the Poor Law, Title 44, and a 62-year-old who is neither blind or disabled is therefore not within any of the categories so protected and therefore not covered by the provisions of either the statute or the emergency assistance regulations in N.J.A.C. 10:83-1.2.

DISCUSSION AND ANALYSIS

The present wording of N.J.A.C. 10:83-1.2 is silent as to the eligibility of an SSA recipient for emergency assistance. This silence concerning SSA recipients led the welfare agency to consider them to be ineligible for assistance. It is interesting to note that the rule does specifically mention, and at the same time exclude, Medicaid Only recipients. This may well reflect the position of county counsel that SSA recipients, that is, 62-year-old retirees who are neither blind or incapacitated, were not public welfare, public assistance clients and therefore would not even be considered in determining who might be eligible for emergency assistance.

Resort to Title 44 and to the sections cited by counsel in support of his contention that the statute does require individual consideration of the circumstances in each case does not appear to provide an avenue for relief. N.J.S.A. 44:7-12, which is the specific section which includes the language concerning “due regard for the conditions existing in each case” and also contains language about the provision of “assistance adequate to provide for their reasonable maintenance and
well being" is a statute which deals with old age assistance, which traditionally has referred to individuals over the age of 65. N.J.S.A. 44:7-38 deals with individuals who are between 18 and 65 and who are "permanently and totally disabled by reason of any physical . . . defect . . . or impairment other than blindness . . . ." These individuals are "entitled to receive assistance . . . ."

These statutory citations reflect a general concern which the State has reflected through its statutory scheme for protecting certain classes of individuals who were in need because of some condition, be it age, disability, blindness, etc. When these are read in conjunction with the present 10:83-1.2, which is the handbook governing payments to these categories of individuals, it is clear that the present regulation, in its limitation of emergency assistance to individuals receiving SSI benefits, does not necessarily reflect a determination under the present regulatory scheme that an individualized consideration be made for every individual who presents himself to a welfare agency as an indigent and who is under age 65, claiming disability, and not at that time the recipient of SSI benefits. For instance, an individual who for some reason or another has never applied for SSI, despite claiming incapacity, would not be eligible under 10:83-1.2, even though in fact, upon examination, the individual may be found disabled.

In order to read coverage under the emergency assistance regulation to include individuals who are indigent, homeless, claiming incapacity and recipients of SSA, as opposed to being recipients of SSI, one must look to the entire statutory and regulatory context as they have been interpreted by both the Commissioner of Human Services and the Supreme Court. This leads to consideration of the analyses given in Williams v. Dept. of Human Services, 116 N.J. 102 (1989). That case, which dealt with emergency assistance under the General Public Assistance Law, GA, concluded that although the five-month expiration of EA assistance regulation was proper, it was so only where the Department had provided a program to make it "reasonably certain that [the EA claimants] previously housed in motels will find shelter and eventually housing elsewhere."

In Williams, the court, citing, Franklin v. New Jersey Dept. of Human Services, 111 N.J. 1 (1988), reflected its concern for the ""destitute, sick and disabled homeless citizens . . . .". The court concluded that in analyzing the question of whether the "Legislature intends that there shall be no other program in place to address the GA recipients' need when the EA benefits run out" that it was necessary to look at the "overall statutory scheme of New Jersey public assistance to
provide relief for the homeless,” *Williams, supra*, at 107. The court noted that

relief of the poor has been considered an obligation of government since the organization of our state . . . . Before statehood was achieved, the Legislature of the colony adopted measures for relief of the poor. *Roe v. Kervick*, 42 N.J. 191, 212-13 (1964). *Williams, supra*, at 109.

In the course of its consideration of the GA/EA situation, the Court noted that the Department of Human Services argued that “it has no mandate to provide shelter for the needy.” In this case, the county welfare agency argues that it has no mandate to provide shelter for the SSA recipient. The Court countered that although the Department argued that the requirement that it assure that individuals “not suffer unnecessarily, from cold, hunger, sickness or be deprived of shelter pending further consideration of the case” applied only to “temporary assistance” that it did not

follow from this that the Legislature intended that such persons should be caused to suffer unnecessarily from cold or be deprived of shelter after their cases were investigated? That would make no sense of the statute. *Williams, supra*, at 114.

The court went on to conclude that

Although the language of the act has changed over the years and the charge appears explicitly in the “temporary assistance” rubric, we are satisfied, as was the *Pascucci* Court that “[t]he law exists to the end that . . . persons may not suffer unnecessarily, from cold, hunger, sickness or be deprived of shelter . . . .” *Williams, supra*, at 115, citing *Pascucci v. Vagott*, 71 N.J. 40, 48 (1976) (quoting *N.J.S.A. 44:8-122*).

The thrust of the court’s decisions in *Williams* and *Franklin* is that the Department of Human Services has an obligation, which it has provided assurances it will meet, that it intends to assure that as best as possible, no individual who is needy and homeless falls through the safety net of public assistance and aid. Mr. M., in his present condition, is needy, homeless and is falling through the net.

There is no evidence before me as to why *N.J.A.C. 10:83-1.2* is silent with respect to SSA beneficiaries. It may be that this reflects a historic and traditional approach as to what categories of individuals were considered to be worthy of assistance. Mr. M. is not 65 years, which at one time was considered the traditional retirement age. He is 62 and is eligible to receive social security retirement benefits. As a result, he has been declared eligible for these, became ineligible for
general assistance, and now finds himself with no place to turn. In fact, if Mr. M. somehow survives his current state of homelessness for a period of three years, he will reach the magic age of 65 and become eligible for SSI benefits. And without any change in his present circumstances whatsoever, except the mere passage of three years time, he will become eligible for emergency assistance.

This decision is written as an emergency opinion. Time and the stresses of other emergencies do not permit a full and complete recitation of the arguments or a complete analysis of the current case law which points this judge in the direction of concluding that the agency must provide benefits for this individual. Suffice it to say that it seems inconceivable that in this society and in this State, with its history of concern for the indigent going back to colonial times, that the hole which exists in the safety net for individuals such as Mr. M. would be permitted to continue. In view of the silence of the regulation as to SSA recipients there is nothing specifically therein which prevents the agency from including those individuals who have reached social security retirement age and begun to draw social security benefits under the SSA program, who are homeless and indigent, and who no longer can receive GA benefits because their SSA benefits are greater than the upper limit of GA eligibility from receiving EA assistance. Indeed, as with Mr. M., many of these individuals receiving SSA at his age will receive less money per month than they would receive if they were SSI beneficiaries. While the distinction and the amount of money received may as a practical fact be meaningless with respect to their ability to obtain housing on their own, the difference merely points out the fact that these individuals are often, in relative terms, even more indigent than the SSI recipients. Where an individual is indigent and homeless it appears to be the clear intention of the statutory scheme to protect that individual, at least to some degree. While recognizing that there are limitations even to emergency assistance, it is clear that the Supreme Court has required that programs be in place to do the best possible to assure that GA and AFDC and SSI emergency assistance recipients not end up in the streets when their benefits run out. As with those individuals, such should be for individuals such as Mr. M.

For the reasons expressed, I CONCLUDE that the county welfare agency may not automatically exclude Mr. M. from receipt of emergency assistance because he is a recipient of SSA, as opposed to SSI, benefits. The agency is directed to provide such emergency assistance as is appropriate in accordance with the standards which apply to other recipients of such benefits.
If you disagree with this decision, telephone the Division of Public Welfare within one day at 1-609-588-2136 to explain why you think the decision is wrong. A final decision, which may adopt, modify or reject this initial decision will be issued by the Division of Public Welfare within three days.

FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF ECONOMIC ASSISTANCE, MARION E. REITZ:

Having reviewed the initial decision and any exceptions or replies submitted, I hereby reject the recommended decision of the Administrative Law Judge (ALJ) and affirm the County Welfare Agency's denial of petitioner's application for emergency shelter assistance. Additionally, as specified at the end of this decision, I direct the county welfare agency to aid the petitioner in securing shelter through other community agencies.

This case involves an emergency hearing conducted pursuant to N.J.A.C. 1:10-12.2. The latter is part of the Office of Administrative Law (OAL) Rules, Chapter 10, which sets forth special rules dealing with the conduct of Economic Assistance hearings, N.J.A.C. 1:10-1 et seq. I deal first with the question of whether the initial decision of the ALJ, entered on March 8, 1990, became the final decision of the Division of Economic Assistance by operation of law upon the failure of the Division to adopt, modify or reject the initial decision within the three-day period set forth within N.J.A.C. 1:10-12.2(a)(6).

The initial decision in this matter is dated March 8, 1990 and was transmitted to the Division on the same date. After receipt the Division determined that the decision raised novel legal issues of potentially significant general impact on program administration, and that the final decision warranted a degree of consideration that could not be accomplished within the three days normally provided for the issuance of final decisions in emergent hearings. Accordingly, on March 19, 1990 the Division requested of the OAL an extension of time within which to issue the final decision. Counsel for petitioner objected to the requested extension in a letter to the Director, OAL dated March 22, 1990. The Division replied to this objection on the following day. In a letter of March 23, 1990, the Director of OAL denied the Division's request, chiefly for the stated reason that the request was untimely made pursuant to N.J.A.C. 1:1-18.8. In the
interim the county welfare agency, at the Division's direction, has secured shelter placement for the petitioner.\footnote{Although this information does not form any part of the basis of this decision, it is noted that the county welfare agency (CWA) advised the Division that although the CWA secured placement for petitioner in a private shelter in Jersey City on March 23, 1990 and again several days later, petitioner had not appeared at the shelter as of March 30, 1990, the date of this agency's last inquiry.}

In pertinent part, \textit{N.J.A.C. 1:10-12.2} provides:

(a) When DEA determines that a request for hearing should be scheduled as an emergency fair hearing;

6. The Director of DEA shall issue a final decision no later than three days following the date the initial decision is received which shall accept, reject or modify the initial decision. On the date the final decision is issued, the DEA shall notify the CWA [county welfare agency] or MWD [municipal welfare department], the Office of Administrative Law and the petitioner or petitioner's representative of the final decision and any relief ordered shall be provided on the date notice of the decision is received.

Chapter 10 contains no provisions respecting requests for extensions of time, nor does this Chapter contain any language prescribing the effect of a failure to issue a final decision within three days. These omissions contrast with provisions found among the OAL's general hearing rules. Thus, \textit{N.J.A.C. 1:1-18.6} at subsection (a) requires the issuance of a final decision within 45 days, and further provides at subsection (c) that "[i]f an agency head does not reject or modify the initial decision within 45 days and unless the period is extended as provided by \textit{N.J.A.C. 1:1-18.8}, the initial decision shall become a final decision."

Significantly, \textit{N.J.A.C. 1:1-18.6(a) and (c)} implement and mirror provisions of the Administrative Procedure Act, \textit{N.J.A.C. 52:14B-10(c)}, which mandate as a matter of substantive law that final agency decisions be rendered within 45 days and that

\[\text{unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency.}\]

This subsection further provides,

For good cause shown, upon certification by the director and the
agency head, the time limits established herein may be subject to extension.

The 45-day period set forth in the foregoing is the sole time limitation imposed upon final decisions by the Act; neither this section nor any other part of the Administrative Procedure Act (APA) mentions emergency hearings, nor are there any provisions for the attenuation of the 45-day limit of N.J.A.C. 52:14B10(c). In sum, there are no provisions in the APA, and hence no requirement of the substantive law, mandating that an initial decision be deemed final owing to agency inaction after three days or any other period of time less than 45 days.

Nor, as previously noted, is there any similar deeming provision among the procedural rules established by the OAL. The absence of such deeming provisions from Chapter 10 of the OAL rules is conspicuous, and may be regarded as a deliberate omission reflecting a determination to refrain from imposing, through a procedure rule, a requirement that would be both substantive in nature and beyond the scope of the Act. Given these factors I decline to find that in the circumstances of this case the initial decision became the final decision upon expiration of the three-day period set forth in N.J.A.C. 1:10-12.2.

Alternatively, I note that in any event the Division, as does any administrative agency, has the inherent authority to modify a decision where the interests of justice require. Application of Trantino, 89 N.J. 347 (1982); Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99 (App. Div. 1975), aff'd 69 N.J. 599 (1976). Assuredly, such an action is not to be undertaken lightly. The initial decision in this matter, even if it were deemed to be final under the OAL rules of procedure, nonetheless strays so far from the established law as to require correction.

Pursuant to Division of Economic Assistance regulations, emergency assistance is available through the county welfare agencies to persons who either qualify for assistance in the Aid to Families with Dependent Children (AFDC) program or who are recipients of Federal Supplemental Security Income (SSI) benefits. N.J.A.C. 10:82-5.10, 10:83-1.2. Additionally, emergency assistance is available through the municipal welfare departments (MWDs) to persons who qualify for assistance in the General Assistance program. N.J.A.C. 10:85-4.6. There are no provisions of law which authorize the granting of emergency assistance through this Division to persons other than the above.
This matter involves an application to the Hudson CWA for emergency assistance by R.M., an individual who plainly on the face of the initial decision does not meet the eligibility criteria of the above-listed programs and who is not a recipient of SSI. The CWA, which by statute and regulation is limited in its authority to grant cash assistance as stated above, accordingly properly rejected this application as beyond the scope of its mandate and authority. R.M. is facially ineligible for emergency assistance under N.J.A.C. 10:82-5.10, 10:83-1.2 or 10:85-4.6. Nor, as dealt with briefly in the following, are any of the reasons underlying the ALJ's recommended decision to the contrary persuasive.

The ALJ mischaracterizes the agency's action in stating that it denied R.M. benefits "because he is a recipient of SSA." R.M.'s status as an SSA recipient is immaterial. Benefits were denied simply because he meets none of the eligibility criteria for the specific aid applied for.

In characterizing N.J.A.C. 10:83-1.2 as excluding SSA recipients from EA eligibility, the ALJ stands the intendment and effect of this regulation on its head and arbitrarily singles out SSA recipients as a class somehow unfairly discriminated against. Of course, any law which extends eligibility to a particular class of persons may be characterized as "exclusive," insofar as such laws necessarily by implication exclude from eligibility all persons not within the eligible class. In this respect, all eligibility criteria, including those limiting General Assistance eligibility to persons with income below certain fixed standards, and the AFDC regulations limiting eligibility to families with children are "exclusive." Under the rationale employed by the ALJ, which does not withstand scrutiny under well-established and rudimentary principles of equal protection analysis, all such standards would be jeopardized.

In the overall benefits scheme the proper avenue for relief for those claiming need of public aid on account of disability is the Federal SSI program. In the present case it appears that the Social Security Administration so far has rejected R.M.'s claim of disability, a matter which he currently is appealing. The Division has neither the authority nor the ability to make disability determinations, nor

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2. The petitioner receives income by way of SSA benefits in the amount of $283 per month. His income thus exceeds the General Assistance financial eligibility standards of N.J.A.C. 10:85-3.3. As a single person he does not qualify for AFDC, which is limited to families with needy dependent children.
does the general language of N.J.S.A. 44:7-12, as urged by the petitioner in this matter, suggest a specific mandate either to determine disability in the first instance or to second-guess the determination of the agency to whom the function is entrusted. In this regard it is noted also that the administration of the subject matter of Title 44, Chapter 7, N.J.S.A.—assistance to the aged, blind and disabled—was transferred over fifteen years ago to the federal Social Security Administration (SSA), and that since that time disability determination and payments to eligible persons have been made by SSA under the Supplemental Security Income (SSI) program.

Finally, the ALJ wrongly construes Franklin v. Department of Human Services, 111 N.J. 1 (1988) and Williams v. Department of Human Services, 116 N.J. 102 (1989) as though the holdings in these cases imposed or implied an obligation upon the Division to provide EA to all persons irrespective of program eligibility. The proposition is patently untrue. These cases dealt respectively and exclusively with the obligations mandated under the AFDC and General Assistance statutes, N.J.S.A. 44:10-1 et seq. and 44:8-107 et seq., as their holdings expressly make plain.

While I share the concerns that clearly underlie the ALJ’s recommendation in this matter, I cannot, consistently with my administrative responsibility, endorse the rationale stated in his initial decision. Particularly in light of the Division’s fundamental statutory responsibility to establish and maintain eligibility standards, and the erosive effect the proposed rationale of the ALJ would have upon eligibility standards for EA in general, I decline to find that the cited authorities require the granting of emergency assistance in this case.

The denial of emergency assistance is affirmed. Notwithstanding, this case presents a situation in which the agency should not decline to help simply because of program ineligibility. Rather, it is proper for the CWA to use its best efforts and resources to see that the petitioner finds shelter assistance through other governmental and community agencies, such as private and public local shelters. In this regard I note that in the interim between the initial decision and this final decision, the CWA has secured placement for the petitioner in a local shelter, but that petitioner so far apparently has neither availed himself of this placement or accounted to the CWA for his omitting to do so. It thus appears that this matter may have become moot.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.