

*Emergency Assistance
(rec. dep.)*

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3065-77

SANDRA NIEVES,

Appellant,

v.

BERGEN COUNTY WELFARE
BOARD, et al.,

Respondents.

Submitted February 5, 1979 - Decided

FEB 21 1979

Before Judges Conford and Pressler.

On appeal from the Final Administrative
Determination of the New Jersey Division
of Public Welfare.

Ms. Rosemarie Bello Truland attorney for
the appellant. *180 Main Street Paterson 365-0550*

Mr. John J. Degnan, Attorney General of
New Jersey, attorney for the respondent
State of New Jersey, Department of Human
Services, Division of Public Welfare (Mr.
Stephen Skillman, Assistant Attorney
General, of counsel; Mr. Jeffrey W. Jones,
Deputy Attorney General, on the brief).

PER CURIAM

Appellant Sandra Nieves appeals from a decision of the
Division of Public Welfare, Department of Institutions and
Agencies, holding that she was not entitled to the emergency
relief for which she applied, namely, funds to enable her to

meet a security deposit requirement in order to rent an apartment for herself and her two children.

The facts are not in dispute. In November 1977 Mrs. Nieves, in order to escape from her abusive husband, left Puerto Rico with her two children, obtaining refuge in the home of her sister and brother-in-law, who lived in Edgewater, Bergen County, with their four children. It was understood by all that this would be a temporary living arrangement in order to give Mrs. Nieves an opportunity to obtain employment and her own place to live. She was, however, unable to find a job and within the ensuing month she exhausted such limited funds as she had in providing for daily necessities. In December, she applied to the Bergen County Welfare Board for AFDC benefits (Aid to Families with Dependent Children) and was awarded, early in January 1978, a monthly grant of \$310 plus an additional \$30 for that portion of December covered by her application. Towards the end of January, her brother-in-law notified her that she would have to leave virtually immediately since his wife was ill and pregnant and overburdened by the strain of her relatives. Mrs. Nieves had sufficient funds as a result of the AFDC grant to pay rent for an apartment of her own. She could not, however, find an apartment available for rent without a substantial security deposit requirement, and she had no funds with which to meet that requirement. She accordingly requested emergency assistance from the Bergen County Welfare Board, whose denial of that relief was affirmed by the Division. The basis of the denial

was that the problem Mrs. Nieves faced was not a qualified emergency because she had an opportunity to plan in advance. We reverse.

The regulation here applicable is N.J.A.C. 10:82-5.10(c) (formerly N.J.A.C. 10:82-5.12(c)), which we considered both in Burton v. N.J. Dep't. of Institutions and Agencies, 147 N.J. Super. 124 (App. Div. 1977) and Barrera v. Dept. of Institutions and Agencies, 150 N.J. Super. 41 (App. Div. 1977). That regulation authorizes emergency assistance to families receiving AFDC or AFWP (Aid to Families of the Working Poor) under a matching fund program made available by the federal government. 42 U.S.C.A. 603(a)(5). More specifically, that regulation authorizes emergency assistance to applicants who are in or imminently face a state of homelessness "because of an emergent situation over which they had no control or opportunity to plan in advance."

It was the Division's conclusion that since appellant knew when she first came to her sister's home that her residence there was only temporary, she had "an opportunity to plan in advance to avoid a state of homelessness." We disagree because in our view the regulation contemplates more than mere knowledge of the imminent situation requiring remedy. We regard the phrase "control or opportunity to plan in advance" as implying not only the obligation but also the capacity to avert the projected emergency before it occurs. We do not doubt appellant's knowledge of the fact as early as November 1977, when she first arrived in Bergen County, that she had to prepare herself for an independent living arrangement as promptly and

effectively as possible. But the undisputed facts also demonstrate beyond doubt that she had an insufficient time in which to make such preparations during the period of less than three months between the date of her arrival and the date she was required to leave her sister's home, in which her status was nothing more than that of a guest. She had no money, although not because of any profligacy. She had no job despite her efforts to find one. She had received AFDC benefits for only one month. We fail to perceive how any amount of planning by appellant between November and January, against the background of these facts, could have produced the funds she needed for a security deposit.

As we said in Burton v. N.J. Dep't of Institutions and Agencies, supra, at 131:

We can appreciate the concern of agencies administering public assistance programs in complying with all applicable regulations and mandated guidelines. They are, of course, in a position of public trust and are responsible and accountable for disbursing substantial sums of public funds. They must nevertheless do so consistently with the purpose of the legislation that is being implemented by the regulations and with reasonable appreciation of the common sense demands of the situations with which they are confronted.

We believe these observations to be equally pertinent here.

The determination appealed from is reversed because arbitrary and unreasonable. We remand to the Division of Public Welfare for such further proceedings as may be necessary to determine the appropriate relief to which appellant is entitled.

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Kjabe, K. Langlin
Clerk