STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

BOARD OF APPEALS

In Re:	)	Docket No. 01-2018-PA-10357
	)	
[APPELLANT'S NAME]	)	**REVIEW DECISION AND FINAL ORDER**
	)	
Appellant	)	TANF

I. NATURE OF ACTION

1. Does a person who is homeless qualify for an emergency housing assistance payment from the Department under the "Additional Requirements for Emergency Needs" (AREN) program despite not having a landlord to whom the Department can make a payment? Based on a hearing held on October 26, 2018, Administrative Law Judge Erika Lim held in her *Initial Order* that Appellant was not entitled to the AREN payment because there was "no evidence" that the Appellant owed money to a landlord. The Office of Administrative Hearings (OAH) mailed the *Initial Order* on November 8, 2018.

2. The Board of Appeals (BOA) granted Appellant more time to file her *Petition for Review of Initial Decision (Appeal),* and the BOA received that *Petition* on December 13, 2018.

3. The Department filed a *Response*, which the BOA received on December 18, 2018.

II. RESULT OF REVIEW

The *Initial Order* is ***reversed.*** The sole basis given for denying Appellant's eligibility for AREN was that she did not have a landlord to whom she owed money or to whom the Department could make an AREN payment. This was an error of law. The AREN rule *assumes* that some recipients of AREN payments will be homeless, and homeless people typically do not have landlords. But the rule allows the Department to appoint a "protective payee" to receive AREN payments, an alternative that defeats the argument that Appellant was not eligible for AREN because payments could not be made when there was no landlord.

III. FINDINGS OF FACT

The undersigned has reviewed the record of the hearing, the documents admitted as exhibits, the *Initial Order*, the *Petition for Review of Initial Decision (Appeal)*, and the Department's *Response.* The following necessary Findings of Fact were relevant and supported by substantial evidence in the record.

1. In May 2016, the Department granted Appellant an "Additional Requirements for Emergency Needs" (AREN) payment, which was the last time she had received one.[1]

2. In September 2016, Appellant filed a written "change of circumstance" with the Department, stating that she was now living on [ADDRESS 1] in the town of [CITY 1], Washington.[2]

3. In December 2016, Department case notes state that [NAME 1], the "landlord" of the residence on [ADDRESS 1], had called the Department to say that Appellant was living at the address and was paying the "landlord" $[AMOUNT 1] per month for rent.[3]

4. The Appellant applied for cash assistance under the Temporary Assistance for Needy Families (TANF) program for herself and her [NUMBER 1] minor children on August 29, 2017.[4]

5. Appellant testified that she "sublet" a room from [NAME 1] – who had previously been identified as the "landlord" – and that around December 26, 2017, trouble with a third person in the home had caused Appellant and her [NUMBER 1]

[1] Testimony of Department representative at approximate recording time of 00.08.00 – 00.08.10 (hour.minute.second).
[2] Ex. 5.
[3] Ex. 6 at 1.
[4] Ex. 3.

children to have to move from the [ADDRESS 1] residence and become homeless.[5] Thus, it is found that at the times relevant here, Appellant and her [NUMBER 1] children were homeless.

6. Though the Appellant's application for AREN is not in the record, apparently there was one because the Department denied the Appellant's application for AREN by a letter dated December 29, 2017, in which it stated its reason for the denial:

> You are not eligible for AREN. Currently, your living situation is not with the property owner.[6]

7. At hearing, the Department agreed that Appellant was receiving TANF benefits during the pendency of this matter.[7] The Department's representative testified, however, that the Department did not approve AREN because it was unable to tell if [NAME 1] had a lease (presumably with the owner) or what her relationship was to the owner of the house. The representative said that it seemed [NAME 1] and Appellant were just "friends," and [NAME 1] did not have a "bona fide relationship with the owner" of the house. The Department representative said the Department "did not have confidence" that it was able to pay [NAME 1] the AREN payment.[8] The representative argued that Appellant was not eligible for AREN payments because the Department had received "conflicting information" about Appellant's living situation and that because it was "unknown" whether Appellant's "landlord" was a "bona fide representative of the property owner," the Department was "unable to process an AREN payment."[9]

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[5] Testimony of Appellant at approximate recording time of 00.15.16 – 00.17.56.
[6] Ex. 2.
[7] Testimony of Department's representative at approximate recording time of 00.06.40 – 00.06.55; 00.18.35 – 00.20.26.
[8] Testimony of Department's representative at approximate recording time of 00.10.40 – 00.15.10.
[9] Testimony of Department representative at approximate recording time of 00.10.13 – 00.10.40.

8. In a *Request for Hearing* dated December 29, 2017, Appellant sought review of her "denial," and specifically stated the program as "AREN."[10] No *Request for Hearing* is in the record concerning Appellant's TANF grant.

9. In 2018, perhaps in preparation for the hearing in this matter, the Department checked the online assessor's records for Appellant's residence on [ADDRESS 1] and determined that the owner of the residence at the address Appellant had provided had the initials [NAME 2].[11]

10. The *Initial Order* made a finding that [NAME 1] "rented the house and sublet a room" to the Appellant.[12] The *Order* also concluded that Appellant "may" have met the requirements of AREN.[13]

11. The *Initial Order*, however, denied Appellant AREN payments for the following reason:

> Given that AREN funds must be paid to a landlord or to a utility company and that there is no evidence that [Appellant] owes or owed money to either a landlord or to a utility company, the Department's decision to deny the application should be affirmed.[14]

IV. CONCLUSIONS OF LAW

1. The *Petition for Review*, after an extension of time, was timely filed and is otherwise proper.[15] Jurisdiction exists to review the *Initial Order* and to enter the final agency order.[16]

2. ALJs and Review Judges must first apply the Department of Social and Health Services (DSHS) rules adopted in the Washington Administrative Code (WAC). If no DSHS

[10] Ex. 1.
[11] Ex. 4.
[12] *Initial Order*, Finding of Fact 4.3.
[13] *Initial Order,* Conclusion of Law 5.9.
[14] *Initial Order*, Conclusion of Law 5.9.
[15] WAC 388-02-0560 through -0585.
[16] WAC 388-02-0217, -0530(2), and -0570.

rule applies, the ALJ or Review Judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington State constitutions, statutes, regulations, and court decisions.[17]

3. In an adjudicative proceeding involving eligibility for TANF and TANF-related services, the undersigned Review Judge has the same decision-making authority as the ALJ to decide and enter the *Final Order,* in the same way as if the undersigned had presided over the hearing.[18] This includes the authority to make credibility determinations and to weigh the evidence. Because the ALJ is directed to decide the issues *de novo* (as new), the undersigned has also decided the issues *de novo*. In reviewing Findings of Fact, the undersigned has given due regard to the ALJ's opportunity to observe the witnesses, but has otherwise independently decided the case.[19] The undersigned reviewing officer does not have the same relationship to the presiding officer as an Appellate Court Judge has to a Trial Court Judge; and the case law addressing that judicial relationship does not apply in the administrative hearings forum.

4. The Washington Administrative Procedure Act directs Review Judges to personally consider the entire hearing record.[20] Consequently, the undersigned has considered the adequacy, appropriateness, and legal correctness of all initial Findings of Fact and Conclusions of Law, regardless of whether any party has asked that they be reviewed.

5. The ALJ had jurisdiction to hear and determine the Appellant's eligibility for TANF and TANF-related services.[21]

6. The AREN program is provided by DSHS to families with an emergency. The rule concerning "additional requirements for emergent needs"[22] (AREN) payments provides, in part, payments to help people who are homeless, but on a close reading the rule nearly assures

[17] WAC 388-02-0220.
[18] WAC 388-02-0217(3).
[19] WAC 388-02-0600.
[20] RCW 34.05.464(5).
[21] RCW 74.08.080, Chapter 34.12 RCW, and Chapter 388-02 WAC.
[22] WAC 388-436-0002.

that no one will qualify for the payments. It sets out a daunting gauntlet of hurdles for an applicant to jump over, and when an applicant is homeless the hurdles are even higher– because a homeless person does not typically have a landlord or utility company to whom the Department can make payment. But there is more to the rule.

7. Rules must be read in their entirety. First, the AREN rule's "title" states that it is designed to "help" people ***"get or keep"*** housing or utilities.[23] In other words, a basic assumption of the rule is that applicants ***may not have housing, but may be seeking TO GET housing.*** And in subsection (6) of the rule it is stated that AREN may be approved to help the people "***get into housing"*** they can afford.[24] Thus, ***to have a landlord to whom payments can be made*** is not an eligibility requirement as the Department argued and the *Initial Order* held because such a requirement runs counter to one of the reasons for the rule: to help homeless people GET housing.

8. Though long and poorly constructed, the rule sets out five requirements that an applicant must meet to qualify for an AREN payment: 1. The household must be **eligible for TANF**, state family assistance (SFA), or refugee cash assistance (RCA); 2. There must be "**an emergency housing or utility need**"; 3. There must be "a **good reason for not having enough money** to pay for" housing or utility costs; 4. The household must not have received the AREN maximum limit of **$750.00 in a twelve-month period**;[25] and, though easily lost midway through the rule, 5. The applicant must **explain how the applicant "will afford to pay for the on-going need in the future,"** and the application may be denied if the applicant's "expenses exceed" income. Each of these five requirements are then elaborated upon in the rest of the rule. Here, the *Initial Order,* while finding only three requirements for AREN, concluded that Appellant "may" have met those requirements.

[23] WAC 388-436-0002.
[24] WAC 388-436-0002(6).
[25] WAC 388-436-0002(1)(a) – (d).

9. The Department did not contest Appellant's eligibility for AREN based on ***any of the requirements above*** nor did the *Initial Order* disqualify the Appellant based on any of these requirements***.*** The ***sole*** reason the Department contended the Appellant was not eligible for AREN was that she had no landlord to whom it could make an AREN payment. From the requirements listed above, it must be noted that having a landlord is NOT a requirement for AREN eligibility. If it were, every homeless person, a population for whom this rule was at least in part intended to help, would be ineligible for AREN payments, since homeless people typically have no landlords.

10. Similarly, the ***sole*** reason the *Initial Order* denied Appellant an AREN payment was the same reason the Department gave, which the *Order* stated as follows: "Given that AREN funds *must be paid to a landlord* or to a utility company and that there is *no evidence that [Appellant] owes or owed money to either a landlord or a utility company,* the Department's decision to deny the application should be affirmed."[26]

11. The Department's argument and the ALJ's conclusion that Appellant could not get an AREN payment because there was no landlord to whom the Department could make the payment, is incorrect. First, the entire statutory and regulatory scheme *assumes* that there may be applicants for AREN payments *who are homeless*. The title of the AREN rule states it is about helping people to "GET or keep" housing. Second, some of the requirements for AREN as set forth above make being homeless a way of showing both an emergency need and a reason for not having enough money to pay for housing. Third, the rule does in fact state that AREN payments will be made to a "landlord," but most importantly here it also states that the Department can assign a "protective payee" to receive those payments.[27] Thus, just because a homeless person does not have a landlord does not and should not disqualify that person from receiving an AREN payment that it specifically designed to help them GET housing.

[26] *Initial Order Conclusion of Law 5.9* (emphasis added).
[27] WAC 388-436-0002(9).

12. Furthermore, the Department's position also seemed to be premised on the Appellant's prior living situation on [ADDRESS 1]. The Department argued it could not pay the AREN payment to Appellant's "landlord," [NAME 1], because [NAME 1] was "only a friend" and it was "unclear what relationship" [NAME 1] had to the property owner. This argument is wrong on the law and the facts. Under the Washington Landlord-Tenant Act, a landlord is defined as meaning "the owner, ***lessor, or sublessor of the dwelling unit*** or the property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager."[28]

The Department focused entirely and incorrectly on the language regarding a "representative of the owner," and both the Department and ALJ seemed to disregard the language regarding "lessor" or "sublessor." In fact, the ALJ concluded that Appellant "sublet" from [NAME 1]. The Appellant paid $[AMOUNT 1] per month to [NAME 1], and thus [NAME 1] was a "landlord" under the statute, completely aside from the fact that she and the Appellant may have become friends during her tenancy. Consequently, whether the Department's denial of AREN was based on the Appellant's subletting on [ADDRESS 1] or on her subsequent homelessness, denial for either reason was untenable. Because the sole basis for denying Appellant eligibility for AREN was that she had no landlord to whom to make the AREN payment was an error of law, Appellant was eligible for AREN payments, even if the payment or payments were made to a "protective payee."

13. Appellant's *Petition*, and her argument at hearing, were largely concerned with the loss of her TANF benefits, apart from the AREN denial. However, there was nothing in the record to show a timely appeal of the loss of her TANF benefits and as the ALJ concluded, there was therefore no jurisdiction to decide that issue.

[28] RCW 59.18.030(14) (emphasis added).

14. The undersigned has considered the record of the hearing, the documents admitted as exhibits, the *Initial Order*, the *Petition for Review of Initial Decision (Appeal)*, and the Department's *Response.* The Findings of Fact in the *Initial Order* were supported by a preponderance of the evidence and are adopted and incorporated here, with any clarifying amendments or additions outlined above. The Conclusions of Law 5.1, 5.3 – 5.6 in the *Initial Order* cited and applied the governing law correctly and are adopted and incorporated as conclusions for this decision. However, the *Initial Order's* Conclusions of Law 5.2 and 5.7-5.9 are not adopted here.

Any arguments in the *Petition for Review* that are not specifically addressed in this *Review Decision* have been duly considered, but are found to have no merit, or to not substantially affect a party's rights. The procedures and time limits for seeking reconsideration or judicial review of this decision are in the attached statement.

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V. DECISION AND ORDER

1. The *Initial Order* is ***reversed.***

2. The Appellant was eligible for Additional Requirements for Emergent Needs (AREN) payments because the Department's sole basis for contesting her eligibility and the *Initial Order's* sole basis for denying eligibility – that the Appellant did not have a landlord to whom the Department could make an AREN payment – was an error of law and therefore not a valid reason to deny eligibility under the rule.

Mailed on the 23rd day of January 2019.

MARC LAMPSON
Review Judge/Board of Appeals

Attached: Reconsideration/Judicial Review Information

Copies have been sent to: [APPELLANT'S NAME], Appellant
Michael Wooley, Department's Representative, MS: N27-26
Community Services Division, Program Administrator, MS: 45440
Erika Lim, ALJ, [CITY 2] OAH