



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/170404

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 28, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group - PSG in regard to Kinship Care, a hearing was held on December 17, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner’s application for Kinship care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

█

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED] Kinship Care Worker  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On October 6, 2015, the Petitioner filed an application for Kinship Care benefits for minor child [REDACTED], the Petitioner’s granddaughter.
3. On November 4, 2015, the agency conducted a home visit. The Petitioner and [REDACTED] were present.

4. On November 22, 2015, the agency contacted ■■■■■'s mother. ■■■■■ reported she is living in a shelter in Las Vegas. She currently has 3 other children living with her. She is not working. ■■■■■ has no AODA, mental health, medical, criminal or CPS issues. ■■■■■ reported that she believed ■■■■■ would be coming to live with her in February, 2016. ■■■■■ sends text messages to ■■■■■ on a daily basis.
5. The whereabouts of ■■■■■'s father are unknown.
6. On November 24, 2015, the agency issued a denial of Petitioner's application finding that ■■■■■ does not meet the criteria as a child or juvenile in need of protection or services and that it is not likely she will meet the criteria in the future. The agency also found that there is no reason, other than financial, that ■■■■■ cannot live with ■■■■■.
7. On November 28, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

The Kinship Care benefit is a public assistance payment of \$232 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

The Statutes require that a county department shall make payments in the amount of \$232 (as of 1/1/2015) per month to a Kinship Care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and, if the child is placed in the home of the kinship care relative under a court order, for a license to operate a foster home.

- 1m. The county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.

2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

...

§48.57(3m)(a)2(am), Wis. Stats.

The Wisconsin Administrative Code, at §DCF 58.10(1), describes the "need" for placement as follows:

- (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:

1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.

2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

It must also be noted that, in Decision No. KIN-40/51985, dated May 22, 2002, the Department's deputy secretary concluded that even when the assessor finds that one of the four grounds cited above are met, there still must be evidence that there is a risk to the child cited in Wis. Stat. §48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in Wis. Stat. §48.57(3m)(am), that there be a need for the placement and that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHIPS) case. It also confirms that at least one of the criteria in the list at Wis. Stat. §48.13 must be satisfied.

In a nutshell, the placement must be in the best interests of the child and there must be need for the placement as demonstrated by evidence of the child being a CHIPS or JIPS child or the likelihood that the child would be such if living with a parent.

Because this is a new application, the Petitioner has the burden of proving that the criteria in Wis. Stat. § 48.57 are met. In this case, the Petitioner testified that there is nothing wrong with ■■■ but ■■■ preferred to live with her (the Petitioner). She testified that ■■■ asked her to take care of ■■■ until ■■■ could get back on her feet. The Petitioner disputed ■■■'s report that she has regular contact with ■■■ and stated that ■■■ has had no contact with ■■■ for two months.

Without any additional evidence from the Petitioner, I cannot conclude that placement of ■■■ at the Petitioner's home meets the conditions of § 48.57. Specifically, there is no evidence that ■■■ is a child at risk of abuse or neglect if she lives with ■■■. While ■■■ is currently unemployed and living in a shelter, Petitioner conceded that ■■■ is not at risk of abuse or neglect if she lives with ■■■. ■■■ currently has three other children living with her and there is no evidence of CPS involvement or other issues of concern that would place ■■■ at risk.

Based on the evidence presented, I conclude that the agency properly determined that the Petitioner's application for Kinship Care benefits for ■■■ does not meet the criteria in Wis. Stat., § 48.57.

#### CONCLUSIONS OF LAW

The agency properly denied the Petitioner's Kinship Care application.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

#### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of March, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 22, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care