



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/171969

PRELIMINARY RECITALS

Pursuant to a petition filed February 08, 2016, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Waushara County Human Services in regard to Kinship Care, a hearing was held on March 24, 2016, at Wautoma, Wisconsin.

The issue for determination is whether Petitioner’s Kinship Care was correctly discontinued as the biological parent of the children for whom Petitioner receives Kinship Care was temporarily in Petitioner’s home.

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
Waushara County Human Services
213 W. Park Street
PO Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waushara County.
2. Petitioner and his spouse have been receiving Kinship Care payments for 3 grandchildren. They have had a guardianship for the children since December 2013.

3. The mother of the 3 kinship care children is the Petitioners' daughter.
4. Petitioners' daughter was involved in an auto accident on November 15, 2015. She needed surgery and time to rehab and had to move into the home of Petitioners. Her injuries were to her left ankle but she could not live in her residence due to being unable to negotiate stairs with a walker. Petitioner reported this to the agency promptly.
5. The daughter had her final surgery on December 3, 2105 and started rehab in early February 2016.
6. The daughter had been employed but was unable to work during from the time of the accident but her job was held for her.
7. The agency told Petitioners that a biological parent cannot be in the home of the Kinship Care relative but allowed the presence here until January 31, 2016.
8. On February 3, 2016 the agency sent Petitioners a letter informing them that Kinship ended as of February 1, 2106 because their daughter was still in the home. The letter did not cite the law or policy basis for the discontinuance.
9. Petitioners' daughter returned to work on February 22, 106 and rented a new residence as of mid-March 2016.

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 (NLR) 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.

Further, prior to discontinuing Kinship Care and agency is required by law to issue proper notice:

DCF 58.08 Appeal and review rights. (1) NOTICE. (a) If an agency denies approval to an applicant for a kinship care or long-term kinship care payment, discontinues a kinship care or long-term kinship care payment or denies a good cause claim under s. DCF 58.09, the agency shall notify the applicant or kinship care or long-term kinship care relative in writing of its decision and the reasons for the decision, and shall include in the notice information about the applicant's or kinship care or long-term kinship care relative's right to appeal or request a review of that decision under sub. (2).

(b) If the notice states a payment will be discontinued, the notice shall also include a statement that the payment shall not be terminated until after the hearing decision is issued following the hearing if the kinship care or long-term kinship care relative requests a hearing within 10 days after the date of the notice. The notice shall also state that if the decision to terminate the payment is upheld at or after the appeal hearing, any payments made while the appeal was pending may be recovered by the agency.

Wis. Admin. Code, §DCF 58.08(1).

Notice here was not until after the discontinuance of benefits but Petitioner's did appeal within 10 days of the notice and the cut off so benefits should have been continued.

Regardless, I am reversing the discontinuance. Petitioners reported the circumstances here the day after the daughter's auto accident, clearly they have been 'up front' with information. She had her last surgery in early December and began rehab in early February. She returned to work on February 22, 2016 and moved out of Petitioner's home shortly after. There is no cite to law or policy standards that further detail the need for the discontinuance here. While as a general proposition there is no need for a Kinship Care payment for a placement with a relative if a parent is in the home and can parent, there is nothing here to indicate that the conditions leading to placement of the children with the grandparents changed. There is nothing to indicate that the children would not meet the Kinship Care eligibility criteria if the grandparent Petitioners here were not present. The mother could not care for the children previously and nothing suggests that she can care for the children after the accident and surgery and during the rehab period here.

CONCLUSIONS OF LAW

That Petitioner's Kinship Care was not correctly discontinued given the lack of law or policy to support the discontinuance under the circumstances of this case.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to restore Petitioner's Kinship Care backdated to February 1, 2016. This must be done within 10 days of the date of this Order.

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 9th day of June, 2016

\sDavid D. Fleming
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 June 9, 2016.

Waushara County Human Services
DCF - Kinship Care
DCF - Kinship Care