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

In the Matter of

██████████
██████████
██████████████████

DECISION

KIN/172617

PRELIMINARY RECITALS

Pursuant to a petition filed March 07, 2016, under Wis. Stat. §48.57(3m)(f), and Wis. Admin. Code §DCF 58.08(2)(b), to review a decision by ██████████ in regard to Kinship Care, a telephonic hearing was held on April 19, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly seeks to discontinue petitioner's Kinship benefits effective April 1, 2016 for failing to comply with foster home licensing.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████████████

Respondent:

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

By: ██████████, Child Specific Resource Specialist

██████████
6737 W. Washington Street, Suite 4400
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On January 25, 2016 [REDACTED] issued a notice to petitioner stating that she had been approved for court ordered Kinship Care benefits for a relative child. The notice also stated that she also needed to meet the requirement that she pursue a foster care license by no later than February 8, 2016. Exhibit 1.
3. On February 15, 2016 [REDACTED] issued another notice to petitioner stating that she needed to meet the requirement that she pursue a foster care license by no later than March 1, 2016. Exhibit 2.
4. On March 2, 2016 [REDACTED] issued a notice to petitioner stating that March 2016 would be the last Kinship Care payment because she had not completed the foster home licensing requirement. Exhibit 3.
5. Petitioner timely appealed therefrom.

DISCUSSION

The Kinship Care benefit is a monthly public assistance payment per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. To be eligible for the payments thereunder, 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).

The eligibility requirements were changed in Wisconsin Act 28, the 2009 biennial budget bill. Wis. Stat., §48.57(3m)(am)1 now reads that one of the conditions of Kinship Care eligibility is that: “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.” The change was made by the legislature to shift the funding for care of children from the Kinship Care program to the foster care program. See DSP Memo Series no. 2010-09, dated September 17, 2010.

Therefore, under current rules when a child is placed by a court in a relative’s home, the relative must apply for both Kinship Care and a foster home license. If the caretaker relative does not complete the foster licensing process, the Kinship Care agency must discontinue the Kinship Care payments. This requirement is set out in the Wis. Admin. Code, §DCF 58.065(1); see also DSP Memo Series no. 2012-10, dated November 5, 2012, which explains the time lines for the application process as well as the requirement that the Kinship Care agency discontinue payments if the caretaker does not complete the foster licensing process.

The regulation reads as follows:

(1) PAYMENTS PENDING DECISION ON FOSTER CARE APPLICATION. Subject to subs. (2) and (3), the agency may make kinship care payments to a kinship care relative or long-term kinship care payments to a long-term kinship care relative who is providing care and maintenance for a child who is placed in the home of the kinship care relative or long-term kinship care relative under a court order until the earlier of the following:

(a) Not more than 60 days after the date on which the county department or department received the completed application of the kinship care relative or long-term kinship care relative for a license to operate a foster home under s. DCF 58.04 (1).

(b) The date on which the application for a license to operate a foster home is approved or denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure if the application is approved or

denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure within those 60 days.

(2) PAYMENT EXTENSION IF NO-FAULT DELAY. If the application for a license to operate a foster home is not approved or denied or the kinship care relative or long-term kinship care relative is not otherwise determined to be ineligible for licensure within 60 days after the date on which the county department or department received the completed application for any reason other than an act or omission of the kinship care relative or long-term kinship care relative, the county department or department may make payments until the earlier of the following:

(a) Four months after the date on which the county department or department received the completed application.

(b) The date on which the application is approved or denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure if the application is approved or denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure within those 4 months.

(3) COURT APPROVES CONTINUED KINSHIP CARE OR LONG-TERM KINSHIP CARE PLACEMENT. Notwithstanding that a kinship care relative's or long-term kinship care relative's application for a license to operate a foster home is denied or the kinship care relative is otherwise determined to be ineligible for licensure, the county department or, in a county having a population of 500,000 or more, the department may make payments to a kinship care relative for as long as all other requirements to receive kinship care or long-term kinship care, as applicable, are met if the court orders the child to remain in the kinship care relative's or long-term kinship care relative's home based on the following information submitted to the court by the county department or the department:

(a) The background investigation specified in s. 48.57 (3p), Stats., and s. DCF 58.04 (2).

(b) The county department's or department's assessment of the safety of the kinship care relative's or long-term kinship care relative's home and the ability of the kinship care relative or long-term kinship care relative to care for the child.

(c) A recommendation by the county department or the department that the child remain in the home of the kinship care relative or long-term kinship care relative.

(4) COURT DENIES CONTINUED KINSHIP CARE OR LONG-TERM KINSHIP CARE PLACEMENT. If a kinship care relative's or long-term kinship care relative's application for a license to operate a foster home is denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure and the court does not order the child to remain in the kinship care relative's or long-term kinship care relative's home under sub. (3), the county department or department shall request a change in placement under s. 48.357 (1) (am) or 938.357 (1) (am), Stats., or a termination of the guardianship order under s. 48.977 (7), Stats., for the long-term kinship care relative. Any person specified in s. 48.357 (2m) (a) or 938.357 (2m) (a), Stats., may also request a change in placement and any person who is authorized to file a petition for the appointment of a guardian for the child may also request a termination of the guardianship order.

Wis. Admin. Code, §DCF 58.065.

Subsection (1) provides that Kinship Care in this situation can continue for no longer than 60 days. Subsection (2) does not apply; there has been no foster care application to delay. Subsection (3) does not apply; as there has been no foster care application to deny. Subsection (4) does not apply; there has not been an action to change the child's placement.

The issue thus is whether the Division of Hearings and Appeals has any authority to provide petitioner with a remedy. I conclude that there is no remedy available here for petitioner. She is required under the law to pursue a foster home license in order to receive Kinship benefits. She agreed to this requirement when she applied for Kinship. See Exhibit 7. If she disagrees with that requirement she must take it up with the Wisconsin Legislature. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. As such, I uphold the termination of Kinship benefits.

CONCLUSION OF LAW

The Kinship agency correctly terminated petitioner's Kinship benefits because she failed to complete the foster home licensing requirement.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 10th day of June, 2016

\sKelly Cochrane
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 10, 2016.



DCF - Kinship Care

DCF - Kinship Care