



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████████  
██████████  
██████████

DECISION  
KIN- 173000

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**PRELIMINARY RECITALS**

On March 21, 2016, the above petitioner filed a hearing request 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. The hearing was held on April 12, 2016, by telephone..

The issue for determination is whether Petitioner's kinship benefits were correctly discontinued after an annual review.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
██████████

Respondent:

Department of Children and Families

██████████  
Professional Services Group - PSG  
1126 S 70th Street  
Suite N 200  
West Allis, WI 53214

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On March 14, 2016, the agency sent the Petitioner a notice advising him that his Kinship care benefits for ██████████ were being denied; though he has been receiving the benefit so this is actually a discontinuance. The notice does not state an effective date. Petitioner filed a timely appeal.

3. Petitioner is the maternal grandfather of [REDACTED].
4. [REDACTED] is 17 years old (DOB [REDACTED]). [REDACTED] has lived with the Petitioner for approximately 11 years. She will be a senior in high school in the fall of 2016.
5. [REDACTED]'s mother suffers from mental health issues and cannot care for [REDACTED].
6. Based on the addresses on the agency annual report Petitioner's father, [REDACTED] lives across the alley from [REDACTED] and Petitioner. [REDACTED] lives with his girlfriend and at least one adult son.

### 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.

For a guardianship based Kinship Care application under statutory subsection (3n) the Wisconsin Administrative Code further requires that the Kinship Care applicant provide proof that they have been named as guardian under *§48.977, Stats.; Wis. Admin. Code, §DCF, 58.15*. In this case, there is no guardianship so I cannot find that Petitioner is eligible to receive Kinship under guardianship provisions.

This decision must still decide whether Petitioner's case meets CHIPS based Kinship Care eligibility criteria. The Statutes require that a county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$232 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.

Chapter 938 of the Statutes deals with juvenile justice issues and juveniles involved in delinquencies who also need protection or services; Chapter 48 is entitled 'Children's Code' and is the relevant chapter for this case. The statutory citation referenced above – *Wis. Stat. §48.13*, which provides for jurisdiction over children alleged to be in need of protection or services – is relevant here and provides as follows:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).  
*§48.13, Wis. Stats.*

In a nutshell, if there is no Chapter 48 guardianship in place, 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.

Agency personnel spoke with [REDACTED]'s father. The agency reports that he told them that he was ready to have [REDACTED] come and live with him. He is also reported to have stated that he had a bedroom for [REDACTED] at his house.

Petitioner and [REDACTED] testified at this hearing. It was their testimony that [REDACTED] has some issues with alcohol and a temper. [REDACTED] testified that she does not have a close relationship with her father and that there is no bedroom for her at the father's home; that bedroom is occupied by a 24 year old son of [REDACTED]. She stated that she does have contact with her step siblings but not much with her father. Though there does seem to be a truce between [REDACTED] and the father's girlfriend, [REDACTED] still has some unease around her. [REDACTED] clearly does not want to live with the father at this point. Finally, by the time of this Decision the father may have moved to the Kenosha area.

As with at least the last review this is again a close call. I note that the standard of proof is preponderance and the Division of Hearings and Appeals cannot base findings on uncorroborated hearsay. Here the agency case is based in good part on a phone interview with [REDACTED] and neither the interviewing worker nor [REDACTED] appeared at this hearing. As such it is hearsay. Hearsay is admissible in administrative hearings. Wis. Stat. § 227.45(1). However, as the Wisconsin Supreme Court has stated, "[P]roperly admitted evidence may not necessarily constitute substantial evidence." *Gehin v. Wisconsin Group Insurance Board*, 278 Wis. 2d 111, ¶ 52 (2005). In *Gehin*, the court held that uncorroborated medical records that were contradicted by the petitioner's sworn testimony was not substantial evidence to support a decision to deny the petitioner coverage. *Id.* at ¶¶ 80-82. In short, I am barred from deciding a contested matter of fact on the basis of uncorroborated hearsay.

Given those factors, I am relying on the first hand testimony of Petitioner and [REDACTED] and concluding that there is a risk that the child would meet the criteria for being a child in need of protection or services.

### **CONCLUSIONS OF LAW**

That the agency incorrectly discontinued Petitioner's Kinship Care benefits.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's Kinship Care benefits be reinstated from the date of cut off, going forward. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

### **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, **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 13th day of July, 2016

\s \_\_\_\_\_  
David 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 July 13, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care