



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/173296

PRELIMINARY RECITALS

Pursuant to a petition filed March 29, 2016, 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 May 03, 2016, 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:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. On March 7, 2016 the petitioner applied for kinship care benefits. The petitioner was caring for her one year old grandchild.

3. On March 10, 2016 the agency conducted a home visit. The agency determined that the child's mother had no reported AODA issues, CPS involvement, or criminal record. There was some indication that the mother may have mental health issues, however, there was no confirmation of what specific mental health issue or how this issue impacted the mother's ability to care for her child. The petitioner reported that the child's mother had moved to Virginia.
4. The child's father is not involved in the child's life. The father is reported to be employed full-time in the U.S. military with no AODA, CPS, or criminal issues.
5. The petitioner has significant CPS history with her own biological children. Her parental rights to three of her biological children were terminated.
6. On March 23, 2016 the agency sent the petitioner a notice stating that her application for kinship care benefits had been denied because it was a voluntary family arrangement.
7. On March 29, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

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. Wis. Adm. Code, §§58.03(12). 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). These requirements are also listed under Wis. Adm. Code DCF, §§58.04

When assessing a person's Kinship Care application, the agency first determines whether there is a need for the child or children 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. Wis. Stat. §§48.57(3m)(am)(1m). Next the agency determines whether the child or children meet one or more of the criteria specified in s. 48.13 or 938.13. Wis. Stat. §§48.57(3m)(am)(2). Wis. Stat. §48.13 is the jurisdictional statute for children in need of protection and services. Finally, the agency conducts a background check. Wis. Stat. §§48.57(3m)(am)(4). If the applicant or another adult in the home has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child, the agency may deny the application. *Id.*

In this case the agency denied the petitioner's application for kinship care benefits because the child does not meet one or more of the criteria under s. 48.13 or 938.13. Wis. Stat. §48.13 is the jurisdictional statute for finding that a child is in need of protection and services. The agency concluded that this child is not in need of protection and services, and the mother is fit to provide care to the child. Thus, this is a voluntary family arrangement, and the petitioner is not eligible for kinship care benefits.

I agree with the agency's determination. There is no evidence that the mother is an unfit parent. The mother moved to Virginia. There is no evidence that she abandoned her child or that she cannot provide care for this child. I am somewhat concerned that this petitioner has had her parental rights to three children terminated in the past, and that the agency believes that she can provide a safe home for this one-year-old child. A one year old child is unable to effectively communicate abuse within a home. In addition, there is no evidence that the petitioner has resolved the previous issues that caused her parental rights to be terminated to three children. Although I have some concerns about the safety of the home, the only issue in front of me is whether the petitioner is eligible for kinship care. For all of the reasons stated above, the petitioner does not meet the criteria for kinship care benefits.

CONCLUSIONS OF LAW

The agency properly denied the petitioner's application for kinship care benefits.

THEREFORE, it is

ORDERED

That the petition 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 4th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 4, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care