



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: KIN - 174659

PRELIMINARY RECITALS

Pursuant to a petition filed on May 26, 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 regarding Kinship Care, a hearing was held on June 15, 2016, by telephone.

The issue for determination is whether the agency correctly denied Kinship Care with a finding that the placement was not in the child's best interest.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [Redacted]
Professional Services Group - PSG
1126 S 70th Street
Suite N 200
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County.

2. Petitioner applied for Kinship Care on February 2, 2016. That application was denied as the respondent determined that placement was not in the best interest of the child. The petitioner subsequently applied anew on April 24, 2016, and that application was denied on the same basis on May 9, 2016.
3. The agency found that petitioner has a history of involvement with Children in need of Protective Services (CHIPS). Petitioner's daughter is presently residing in out-of-home placement.

DISCUSSION

The Kinship Care benefit is a public assistance payment that is 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. Wis. Admin. Code, §§DHS 201.17; 201.31. 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).

For Kinship Care cases in which the relative is not a *guardian appointed under Wis. Stat., §48.977*, the conditions listed in Wis. Stat., §48.57(3m)(am) must be met. The pertinent "conditions specified in par. (am)" here are as follows:

1. The kinship care relative applies to the county department or department for payments under this subsection and 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 interest 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 or 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.

Id., (3m)(am)1, 2. In Decision No. KIN-40/51985, dated May 22, 2002, the Department's deputy secretary concluded that even if there was an apparent need for the placement, 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 CHIPS case.

"Best interests" is defined in the Wisconsin Administrative Code as follows:

If the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child by making a reasonable effort to contact all the child's custodial parents to determine that he or she or they are aware of and have consented to the living arrangement.... If consent is received, the kinship living arrangement is determined to be in the best interests of the child. If the agency, after making reasonable efforts to contact all custodial parents, is unable to contact the custodial parents or custodial parent, the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the child.... *In addition to determining that parental consent exists, the agency shall determine that both of the following conditions exist:*

- a. The applicant's or kinship care relative's parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child.*

b. A minor child residing in the applicant's or kinship care relative's home has not committed any delinquent acts or other acts that endangered the safety of another child or that could adversely affect the child for whom the kinship care payment would be made or the applicant's or kinship care relative's ability to care for the child.

Wis. Admin. Code, §DCF 58.10(2)(a), portion italicized to stress the issue in this case.

I conclude that the agency made the correct determination. There is an open and pending CHIPS matter concerning petitioner's youngest child. The respondent's representative indicated that petitioner was advised to take care of the CHIPS matter and then reapply for Kinship. The petitioner countered that the CHIPS matter concerning her daughter pertains to her present suicidal ideation and her mental issues. The petitioner has not provided anything to corroborate her testimony suggesting that her daughter's problems, as opposed to her inability to address them, led to the CHIPS petition. Furthermore, the respondent submitted documentation citing petitioner's historical involvement with Child Protective Services dating back to 1992, and 15 Child Protective Services reports within the last 5 years. This information is not refuted.

CONCLUSIONS OF LAW

The Kinship Care agency correctly denied petitioner's application with the determination that her grandchild's placement with her was not in her grandchild's best interest.

THEREFORE, it is

ORDERED

That the petition for review 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, **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 Madison,
Wisconsin, this 22nd day of September, 2016

\s _____
Peter McCombs
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 September 22, 2016.

Professional Services Group - PSG
DCF - Kinship Care
DCF - Kinship Care