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

In the Matter of

[REDACTED]

DECISION

KIN/142248

PRELIMINARY RECITALS

Pursuant to a petition filed July 09, 2012, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on October 02, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied Kinship Care (KC) benefits to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Kathleen O'Connell, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner began caring for minor children NP and AJ at her home in April, 2012. NP and AJ are the children of Petitioner's cousin.

3. On May 3, 2012, the Petitioner applied for KC benefits for NP and AJ.
4. On May 17, 2012, a home visit was conducted at the Petitioner's home. The Petitioner, NP and AJ were present for the visit. The assessor noted that the Petitioner provides good supervision for the children and attends their school functions. The children appeared to be health and well-cared for by the Petitioner. The Petitioner's home was noted to be clean and well -furnished.
5. On May 18, 2012, a phone interview was conducted with TP, the mother of NP and AJ. TP has no AODA, mental health or medical issues. She has no CPS history. In addition to NP and AJ, the TP has five younger children who live with her and an older child who is incarcerated. TP is currently unemployed and actively seeking employment. TP receives FS benefits and child support payments. She also receives financial assistance from her mother.
6. On June 4, 2012, a home visit was conducted with TP at her sister's apartment. TP lost her residence due to a landlord foreclosure and has been unable to find housing for the 9 people in her family. She is living between her sister's apartment and a friend's apartment. Two of her children were present at the time of the home visit. The assessor noted the children appeared to be health and well cared for. TP reported to the assessor that she asked the Petitioner to take her two oldest children NP and AJ because there had been acting out in school, doing poorly academically and arguing with the younger siblings.
7. The identity of NP and AJ's father(s) is unknown.
8. NP and AJ visit with TP on a weekly basis. They also have regular phone contact.
9. On June 22, 2012, the agency issued a Notice of Non-Approval of KC Payment to the Petitioner informing her that the benefits were being denied because the children do not meet the criteria as children or juveniles in need of protection or services and it is not likely that they will meet the criteria in the future.
10. On July 9, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

I. INTRODUCTION.

The Kinship Care benefit is a public assistance payment of \$220 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 (see, Wis. Stat. § 49.19). 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). See also, Wis. Admin. Code ch. DCF 58.

The eligibility/review criteria for a relative who is a guardian under §48.977 versus a relative who is not a §48.977 guardian are different. There is no evidence in the record that the petitioner is a §48.977 guardian.

For Kinship Care cases in which the relative is not a §48.977 guardian, all of the conditions listed in §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.

The petitioner's residence is suitable for NP and AJ. The Petitioner treats the children appropriately, and has created a stable environment for them. Accordingly, the placement satisfies the "need for the child's placement" criterion described at Wis. Admin. Code §DCF 58.10(1)(a) (November, 2008). However, the agency's basis for discontinuance was that the child does not meet one of the criteria at Wis. Stat. §48.13.

II. THE CHILD DOES NOT FIT A CATEGORY UNDER WIS. STAT. § 48.13.

The children's situation must also satisfy the test at §48.57(3m)(am)2 – "the child meets one or more of the criteria specified in s.48.13 or 938.13." Section 938.13 refers to juvenile delinquents and truants; these children are not juvenile delinquents or truants.

The list of §48.13 criteria is as follows:

- 48.13 Jurisdiction over children alleged to be in need of protection or services. ...
 - (1) Who is without a parent or guardian;
 - (2) Who has been abandoned;
 - (3) Who has been the victim of abuse, as defined in s.48.02
 - (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s.48.02(1)..., 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) 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;
 - (5) 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;
 - (6) Who has been placed in 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 petitioner 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).

Wis. Stats § 48.13.

The children did not fit into one of the criterion at §48.13 at the time of the 2012 Kinship Care assessment. The mother has not abandoned, neglected, or abused the children in the past. Accordingly, there is insufficient evidence for me to conclude that the child has been or will be neglected for a reason other than poverty. Because the children did not fit any of the §48.13 criteria, the Petitioner is not eligible for Kinship Care benefits.

CONCLUSIONS OF LAW

The agency correctly determined that the children in this case do not meet any of the criteria at Wis. Stats. §48.13 at the time of the assessment.

THEREFORE, it is ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of October, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: DCF - Kinship Care, Mary.Kennedy@wisconsin.gov - Mary.Kennedy@wisconsin.gov
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The preceding decision was sent to the following parties on October 26, 2012.

Perez-Pena Limited
DCF - Kinship Care
DCF - Kinship Care