



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

In the Matter of

[REDACTED]

DECISION

KIN/142768

PRELIMINARY RECITALS

Pursuant to a petition filed August 1, 2012, under Wis. Stat., §48.57(3m)(f), to review a decision by Perez-Pena Limited to deny Kinship Care, a hearing was held on October 17, 2012, by telephone.

The issue for determination is whether there is a need for placement of petitioner's grandchildren.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Jazette Anderson, Perez-Pena
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On June 20, 2012, petitioner applied for Kinship Care for three grandchildren. The children were placed with petitioner in 2011 as part of a child protective service case in North Carolina following "a long history of domestic violence with [the children's mother] and father of all the children, lack of follow-through on services and drug use/selling." The North Carolina Department concluded that the children would be placed in state custody unless they were placed with petitioner.

3. The children's mother moved back to Milwaukee soon after the North Carolina events. As of this date she has taken no action to get custody of the children.
4. When the Kinship Care assessor spoke with the mother she told the assessor that she has regular contact with the children, that the North Carolina charges were dismissed with no change in custody, and that she allows the children to remain with petitioner because of her work schedule.
5. The father of the oldest child lives somewhere in Florida and has no contact with the child. The father of the younger two children has a history of domestic abuse including the North Carolina allegations.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$215 per month 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).

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.

The primary criteria under §§48.13 and 938.13 at issue in Kinship Care cases are that the child needs protection because he has no parent or his parents have abandoned him, he has been a victim of abuse or is at risk of abuse, or the parents refuse to or are unable to provide necessary care, food, clothing, or shelter for reasons other than poverty. Other criteria under those sections are that the child has not been immunized, the parent is not seeking medical care for the child, the child is habitually truant while in the parent's custody, or the child has committed a specified delinquent act while in the parent's custody.

I conclude that there is a need for the placement and that the §48.13 criteria have been met. It appears that the North Carolina documents were not presented to the agency until the hearing, and although petitioner mentioned the mother's history, it was not clear how involved it was, particularly with the mother minimizing the protective services history to the assessor. However, in light of the North Carolina history, it is evident that the mother's inability or inaction to regain custody is more involved than merely financial, and that the mother continues to have serious problems which could lead to neglect or even abuse of the children.

CONCLUSIONS OF LAW

Petitioner's custody of her grandchildren is necessary because a child protective services action in North Carolina led to their placement with petitioner.

THEREFORE, it is ORDERED

That the matter be remanded to the agency with instructions to find a need for the placement of petitioner's grandchildren and to grant Kinship Care if all other eligibility criteria are met, retroactive to the application date. The agency shall do so within 10 days of this decision.

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 Madison,
Wisconsin, this 22nd day of October, 2012

Brian C. Schneider
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 October 22, 2012.

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