



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of



DECISION

KIN/142997

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 08, 2012, under Wis. Stat. §48.57(3m)(f), and Wis. Admin. Code §DCF 58.08(2)(b), to review a decision by St. Aemilian-Lakeside, Inc. in regard to Kinship Care, a hearing was held on November 27, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly discontinued petitioner's Kinship benefits for failing to comply with foster home licensing.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

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

By: Kelly Sonnenberg and Julie Bischoff, St. Aemelia n  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On April 23, 2012 St. Aemilian-Lakeside, Inc. issued a notice to petitioner stating that she had been approved for Kinship Care benefits for a relative child. The notice also stated that she also

needed to meet the requirement that she pursue a foster care license by August 12, 2012. Exhibit 2.

3. On two occasions in June 2012, and once in July 2012, the petitioner told the foster care licensing specialist that she did not want to go forward with the foster home licensing process.
4. On July 27, 2012 the foster care licensing specialist withdrew petitioner's application for foster home licensure.
5. On July 31, 2012 St. Aemilian-Lakeside, Inc. issued a notice to petitioner stating that August 2012 would be the last Kinship Care payment if she had not completed the foster home licensing by August 12, 2012.

### DISCUSSION

At issue in this appeal is Wis. Admin. Code, §DCF 58.065 regarding court-ordered Kinship Care. The provision reads as follows:

**(1) PAYMENTS PENDING DECISION ON FOSTER CARE APPLICATION .** Subject to subs. (2) and (3), the agency may make kinship care payments to a kinship care relative or long-term kinship care payments to a long-term kinship care relative who is providing care and maintenance for a child who is placed in the home of the kinship care relative or long-term kinship care relative under a court order until the earlier of the following:

**(a)** Not more than 60 days after the date on which the county department or department received the completed application of the kinship care relative or long-term kinship care relative for a license to operate a foster home under s. DCF 58.04 (1).

**(b)** The date on which the application for a license to operate a foster home is approved or denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure if the application is approved or denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure within those 60 days.

**(2) PAYMENT EXTENSION IF NO-FAULT DELAY.** If the application for a license to operate a foster home is not approved or denied or the kinship care relative or long-term kinship care relative is not otherwise determined to be ineligible for licensure within 60 days after the date on which the county department or department received the completed application for any reason other than an act or omission of the kinship care relative or long-term kinship care relative, the county department or department may make payments until the earlier of the following:

**(a)** Four months after the date on which the county department or department received the completed application.

**(b)** The date on which the application is approved or denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure if the application is approved or denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure within those 4 months.

**(3) COURT APPROVES CONTINUED KINSHIP CARE OR LONG-TERM KINSHIP CARE PLACEMENT.** Notwithstanding that a kinship care relative's or long-term kinship care relative's application for a license to operate a foster home is denied or the kinship care relative is otherwise determined to be ineligible for licensure, the county department or, in a county having a population of 500,000 or more, the department may make payments to a kinship care relative for as long as all other requirements to receive kinship care or long-term kinship care, as applicable, are met if the court orders the child to remain in the kinship care relative's or long-term kinship care relative's home based on the following information submitted to the court by the county department or the department:

- (a) The background investigation specified in s. 48.57 (3p), Stats., and s. DCF 58.04 (2).
- (b) The county department's or department's assessment of the safety of the kinship care relative's or long-term kinship care relative's home and the ability of the kinship care relative or long-term kinship care relative to care for the child.

(c) A recommendation by the county department or the department that the child remain in the home of the kinship care relative or long-term kinship care relative.

(4) COURT DENIES CONTINUED KINSHIP CARE OR LONG-TERM KINSHIP CARE PLACEMENT. If a kinship care relative's or long-term kinship care relative's application for a license to operate a foster home is denied or the kinship care relative or long-term kinship care relative is otherwise determined to be ineligible for licensure and the court does not order the child to remain in the kinship care relative's or long-term kinship care relative's home under sub. (3), the county department or department shall request a change in placement under s. 48.357 (1) (am) or 938.357 (1) (am), Stats., or a termination of the guardianship order under s. 48.977 (7), Stats., for the long-term kinship care relative. Any person specified in s. 48.357 (2m) (a) or 938.357 (2m) (a), Stats., may also request a change in placement and any person who is authorized to file a petition for the appointment of a guardian for the child may also request a termination of the guardianship order.

Subsection (1) provides that Kinship Care in this situation can continue for no longer than 60 days. Subsection (2) extends Kinship Care for up to four months if there is a delay in the foster application process due to no fault of the applicant. Subsection (3) provides that the Kinship agency may continue payments after the foster license is denied if the CHIPS (children in need of protective services) court nevertheless orders the child to remain in the relative's home after recommendations by the department's social workers. Subsection (4) does not apply; there has not been an action to change the child's placement.

The issue thus is whether the Division of Hearings and Appeals has any authority to provide petitioner with a remedy. I conclude that the wording of subsection (3) deprives this office of authority to order Kinship payments beyond the four-month extension allowed in subsection (2). The provision clearly states that Kinship Care can continue beyond the four months only if the CHIPS court orders the child to remain in the home despite a denial of the foster license. The code says nothing about continuing Kinship Care in a situation like petitioner's, especially when petitioner told the licensing specialist and confirmed by her own testimony in the hearing, that she does not want to comply with the requirements for licensure. Petitioner was clearly concerned about how the licensing would affect her own family, as well as her dissatisfaction with her Integrated Family Services (IFS) workers. Much time was spent explaining the former, and I have no jurisdiction to deal with the quality of service from IFS. However, with respect to Kinship, according to subsection (3) only the CHIPS court can order Kinship Care paid beyond the four-month extension. Nothing in the code suggests that the Division of Hearings and Appeals has such authority. As such, I uphold the termination of Kinship benefits.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

1. The agency was required to end Kinship Care after the end of the four-month extension allowed in Wis. Admin. Code, §DCF 58.065(2).

2. The Division of Hearings and Appeals does not have authority to order Kinship Care payments beyond the four-month extension.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 served and 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 17th day of December, 2012

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\sKelly Cochran  
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 December 17, 2012.

St. Aemilian-lakeside, Inc.

DCF - Kinship Care

DCF - Kinship Care