



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

KIN/143548

PRELIMINARY RECITALS

Pursuant to a petition filed September 01, 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 24, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's request for hearing was timely.

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:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the maternal great aunt of the child YS who recently turned 13 years old.
3. [REDACTED] [REDACTED] is the father of YS.

4. In June 2012, YS was living with [REDACTED] [REDACTED] [REDACTED] had a domestic disturbance at his home. Police responded and noticed that [REDACTED] did not have power/electrical service working at the home. Police suggested that YS stay with a relative or family member temporarily. [REDACTED] [REDACTED] arranged for YS to stay with petitioner until he paid his overdue power bill.
5. [REDACTED] [REDACTED] has paid the bill. Power is restored.
6. The agency conducted a home visit to [REDACTED] [REDACTED] s home and reported finding an appropriate and safe home for YS to live in.
7. [REDACTED] [REDACTED] wants YS to return to his home.
8. [REDACTED] [REDACTED] has not record of AODA issues, child abuse or neglect, or criminal history.
9. Petitioner filed for kinship care benefits on June 23, 2012.
10. The application was denied by notice on July 20, 2012.
11. Petitioner filed a request for hearing that was received at the Division of Hearings and Appeals on September 4, 2012.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. If the Kinship Care agency takes a negative action after the assessment, the applicant or recipient may then submit a written request for a hearing. The request must be **received** by Division of Hearings and Appeals within 45 days of the date of the negative notice per Wis. Stat. § 48.57(3m)(f). A negative action can be the denial of an application or termination of an ongoing case.

The petitioner's appeal was filed with the Division of Hearing and Appeals on the 46th day after the date of July 20, 2012 notice of negative action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I note that even if this appeal had been timely, there appears to be no basis whatsoever for petitioner to receive kinship benefits. The child lived with petitioner as the result of a voluntary arrangement. The child's father has wanted the child to come back to live with him for months. There was no argument from petitioner that the father is unable or unwilling to provide an appropriate home. The home visit from the agency also confirmed that there is no reason the child cannot live with her father. The only reason given for the fact that the child still lives with petitioner was that the child likes it and does not want to go back. There is no reason for kinship care under these facts.

CONCLUSIONS OF LAW

The appeal was not timely filed.

THEREFORE, it is

ORDERED

That this appeal 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 Madison,
Wisconsin, this 24th day of October, 2012

John P. Tedesco
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 24, 2012.

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