



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

KIN/143675

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 6, 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 November 6, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied petitioner's application for Kinship Care benefits on behalf of her two grandchildren.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Appearing with petitioner:

[REDACTED]

Respondent:

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

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

**ADMINISTRATIVE LAW JUDGE:**

Michael A. Greene  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the maternal grandmother of [REDACTED] (age 4) and [REDACTED] (age 8). The children had been placed with petitioner for approximately 3 months before petitioner applied for Kinship Care benefits on July 12, 2012.

3. The children's mother, [REDACTED] resides with her boyfriend. She is attending Kaplan College after having lost her job of six years' standing as a security guard. She has been evicted from public housing for failure to keep the premises clean and failure to pay rent. While in [REDACTED] care, the children have been described by petitioner as dirty, unkempt and bruised and as having no clean clothes. There is no CPS involvement and no there are no AODA issues reported.

### DISCUSSION

The Kinship Care benefit is a monthly public assistance payment of \$220 per child paid to a qualified relative who bears no legal responsibility for the support of the child. The program is established under *Wis. Stats.* §48.57(3m) and (3n) which sets forth the conditions for eligibility. The conditions pertinent to this case are that,

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 interests 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, 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 or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

*Wis. Stats.* §§48.57(3m)(am)1., 2. Thus, for purposes of this case, petitioner must establish three elements: (1) that there is a need for the placement; (2) that the placement is in the best interest of the child; and, (3) that the child meets or would be at risk of meeting one of the criteria that would make the child eligible for services as a child in need of protection or services (CHPS) under the Wisconsin Children's Code, *Wis. Stats.* Ch. 48, §48.13.

In the current case the application for Kinship Care benefits was denied for failure to meet the third requirement: that the children meet or would be at risk of meeting one of the criteria that would make the child eligible for services as a child in need of protection or services under the Children's Code.

**Criteria for determining CHPS status.** *Wis. Stats.* §48.57(3m)(am)2. provides that in order for petitioner to be eligible to receive Kinship Care benefits with respect to [REDACTED] they must meet one or more of the criteria set forth in *Wis. Stats.* 48.13 (which determine whether a child is in need of protection or services) or would be *at risk of meeting one or more of those criteria*. It is not necessary that the children actually need protection or services, it is only necessary to conclude that without placement with the kinship care relative, the children would run the risk of requiring protection or services.

Protection or services are generally available to children who have been abandoned, abused or mistreated. *Wis. Stats.* §48.13. Testimony at hearing and information presented in the Kinship Care Eligibility Report (Exhibit 3) established that none of these criteria are applicable here. The children's mother is capable of providing parental care. She maintains a relationship with the children and they visit her several times per week. There is no indication of criminal activity, substance abuse or mental illness where [REDACTED]s living. There do not appear to be any factors that would indicate that there is any unusual risk that the conditions set forth in *Wis. Stats.* §48.13 will develop. The evidence does not establish that [REDACTED] or

█ meet or are at risk of meeting any of the criteria that would render either of them eligible for protection or services under *Wis. Stats.* §48.13.

**CONCLUSIONS OF LAW**

The agency established that the Kinship Care children in this case did not meet the criteria applicable to a child in need of protection or services and that continued placement with their mother would not cause the children to run the risk of being in need of protection or services.

**THEREFORE, it is ORDERED**

That the petition for review herein 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 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 28th day of December, 2012

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\sMichael A. Greene  
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 28, 2012.

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