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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

KIN/144003

PRELIMINARY RECITALS

Pursuant to a petition filed September 21, 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 via telephone on November 13, 2012.

The issue for determination is whether Bureau of Milwaukee Child Welfare [“BMCW”] was correct to discontinue Kinship Care payments to petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Stephanie Purpero, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County, Wisconsin.
2. Petitioner is the grandmother of the following 3 minors: INM (male; age 2 years); ARM (female; age 4 years); and, CGM (male; age 9 years).

3. Petitioner was receiving Kinship Care payments for INM, ARM, and CGM.
4. By a letter dated September 14, 2012, following an annual reassessment, BMCW informed petitioner that the Kinship Care payments for INM, ARM, and CGM could not be approved and would be discontinued.
5. The mother of INM, ARM, and CGM ["CML"; age 31 years] lived with petitioner (in petitioner's 2-bed room apartment) when her children were born and for some time thereafter; she now lives in a 2-bedroom apartment in [REDACTED] where she gets free rent in exchange for managing the property and cleaning the building; she has no serious Alcohol or Other Drug Abuse ["AODA"] issues, no involvement with Child Protective Services ["CPS"], no known criminal record, and no medical or mental health issue; she was employed until the summer of 2012 when she was laid-off when the company closed; she receives Food Stamps ["FS"] as well as \$220 per month in child support; she (along with petitioner) attends school functions and parent teacher conferences for INM, ARM, and CGM; she telephones INM, ARM, and CGM 2 to 3 times per week, visits them every other week, and takes them for an overnight visit with her every other weekend; she states she would like to take INM, ARM, and CGM back into her care once she gets steady and permanent employment and can afford a larger place to live; she has completed high school and now attends school for an Associate's Degree in business administration.

DISCUSSION

Eligibility for Kinship Care payments is governed by state law. Wis. Stat. § 48.57(3m) (2009-10); Wis. Admin. Code § DCF 58.01 (September 2010). Under state law, a person must satisfy several requirements to be eligible for Kinship Care. Wis. Stat. § 48.57(3m)(am) (2009-10); Wis. Admin. Code § DCF 58.10 (September 2010). A person is eligible for Kinship Care only if he or she satisfies these requirements. The County discontinued Kinship Care in this case. Given the evidence in the record of this matter I must conclude that the County was correct to discontinue Kinship Care.

One of the requirements is that the child meets one or more of the criteria for being in need of protection or services (or would be at risk of meeting one or more of those criteria if the child were to remain in his or her home). Wis. Stat. §§ 48.13, 48.57(3m)(am)2. & 938.13 (2009-10); Wis. Admin. Code § DCF 58.10(3) (September 2010). The evidence in the record of this matter, as reflected in the above *Findings of Fact*, is that INM, ARM, and CGM would not meet one or more of the criteria for being in need of protection or services (or would be at risk of meeting one or more of those criteria) if they lived with their mother (CML).

Petitioner testified that she cannot afford to take care of INM, ARM, and CGM. She testified that the children's mother "does what she wants with her money" and that that was not fair. Petitioner might be correct, but this does not show that INM, ARM, and CGM would meet one or more of the criteria for being in need of protection or services (or would be at risk of meeting one or more of those criteria) if they lived with their mother (CML).

In her letter requesting a Hearing she wrote: "There [sic] mother . . . has not cared for, come to see them, or spent any time with her children. She is extremely unstable. She move [sic] from place to place staying with men. The environment that she lives in is unsafe due to the fact that the [sic] is a large amount of traffic in and out of the living space [she] is in. She is currently living with a man that emotionally abuses her." These statements are not consistent with the evidence presented at the Hearing. The evidence presented at the Hearing is based on information gathered from both petitioner and CML

and is more convincing than the statements made by petitioner in her letter requesting a Hearing. Petitioner may again apply for Kinship Care if she obtains more evidence.

This *Decision* only means that petitioner cannot receive Kinship care payments for taking care of INM, ARM, and CGM, it does not mean that INM, ARM, and CGM cannot live with her.

CONCLUSIONS OF LAW

For the reasons discussed above, BMCW was correct to discontinue Kinship Care payments to petitioner.

NOW, 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 Madison,
Wisconsin, this 3rd day of December, 2012

\sSean P. Maloney
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 3, 2012.

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