



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

KIN/144094

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2012, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Wisconsin Department of Children and Families, by Perez-Pena Limited, in regards to the denial of Kinship Care, a telephone hearing was held on November 20, 2012, at Milwaukee, Wisconsin. At the request of the Department's representative, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the Department has correctly denied the petitioner's application for Kinship Care benefits because the applicant's circumstances do not meet child protection and services criteria.

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: Richard Williams, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is the caregiver for her 12 year-old niece, "U.D.J.V." On July 26, 2012, the petitioner applied for Kinship Care benefits for her niece's needs.

2. Perez-Pena worker Richard Williams performed a home visit with the petitioner on August 7, 2012. The child's biological mother (and the petitioner's sister) [REDACTED] [REDACTED] also spoke with the assessor by telephone during the home visit. [REDACTED] reported to Williams that she was in agreement with U.D.J.V.'s placement with [REDACTED] because the child's behavior in [REDACTED]'s home had been escalating out of [REDACTED]'s control, and the child refused to follow [REDACTED]'s household rules. In addition, the child had begun to run away for periods of time and stated she did not want to live in [REDACTED]'s home. [REDACTED] reported to Williams that she contacted the petitioner and they agreed that the child would be temporarily placed with the petitioner in Milwaukee. [REDACTED] informed Williams that she has seven other children, six of whom are minors and live with her at her residence in [REDACTED]. [REDACTED] reported that there had been no child protection or services provided to U.D.J.V., and that if the petitioner had not been available to care for the child, the child would have remained in her home in Indiana.
3. There is no evidence that [REDACTED] has any history of alcohol or drug abuse.
4. On September 7, 2012, the Department, by Kinship Care Program agency Perez-Pena, Ltd., issued a letter notice to the petitioner informing her that her application was denied because the Department had determined that the child does not meet any criteria to be established as a child in need of protection and services, or that it is likely that she will become such a child in the future, pursuant to the requirements of Wis. Stat. § 48.57(3m)(am)2.
5. On September 25, 2012, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of her Kinship Care application.
6. U.D.J.V. has not received any child protection or related services in Wisconsin or Indiana during her entire life; and there is no evidence that suggests that she is in any way at risk of being neglected or abused by her biological mother or the petitioner.

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. 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).

The eligibility/review criteria for a relative who is a guardian under §48.977 versus a relative who is not a §48.977 guardian are different. There is no evidence in the record that the petitioner is a §48.977 guardian. For Kinship Care cases in which the relative is not a §48.977 guardian, all of the conditions listed in §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(*emphasis added*).

Even if the first prong is met, which here I will assume *arguendo*, the child's situation must also satisfy the second prong of the test, i.e., at Wis. Stat. §48.57(3m)(am)2 – “the child meets one or more of the criteria specified in s.48.13 or 938.13.” Section 938.13 refers to juvenile delinquents and truants; this child is not a juvenile delinquents or truant.

The shopping list of Wis. Stat. §48.13 criteria is as follows:

Jurisdiction over children alleged to be in need of protection or services . . .

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195(1);
- (3) Who has been the victim of abuse, as defined in s.48.02
- (1)(a),(b),(c), (d), (e), or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s.48.02(1)..., including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed or care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petitioner requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;
- (11m) Who is suffering from an alcohol and other drug abuse

impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s.252.04 and not exempted under s.252.04(3).

Wis. Stat. § 48.13 [Note: Numbering shown as in the statute].

The child did not fit into one of the criterion at §48.13 at the time of the September, 2012, Kinship Care denial. Her mother has not abandoned, neglected, or abused her in the past. No evidence establishes that the child is in any way at such risk in the future either. Accordingly, there is insufficient evidence for me to conclude that she has been or will be neglected for a reason other than poverty. Because the child did not fit any of the Wis. Stat. §48.13 criteria, the child was not eligible for Kinship Care payments pursuant to the July, 2012, application.

The petitioner may wish to discuss with the biological mother the possibility of the mother helping with U.D.J.V.'s expenses.

CONCLUSIONS OF LAW

That the petitioner is caring for a minor child that does not meet any of the Wis. Stat. § 48.57(3m)(am)2 required criteria of a child in need of protection or services, and the child is not at risk of meeting any of these same criteria; so the petitioner is not eligible for Kinship Care benefits for the child's needs.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same 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 Madison,
Wisconsin, this 27th day of November, 2012

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on November 27, 2012.

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