



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

KIN/143951

PRELIMINARY RECITALS

Pursuant to a petition filed September 19, 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 15, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly denied Kinship Care benefits to the Petitioner.

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On May 25, 2012, the Petitioner filed an application for Kinship Care benefits for her three minor siblings.

3. On June 15, 2012, the agency issued a Notice of Non-Approval of Kinship Care Payment to the Petitioner informing her that the children do not meet the criteria for Kinship Care payments. The notice further informed the Petitioner that an appeal of the agency's determination must be filed to the Division of Hearings and Appeals within 45 days of the date of the notice. The 45th day from the June 15, 2012 notice was July 30, 2012.
4. On September 19, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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. 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. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment (see, Wis. Admin. Code §§ HSS 201.17; 201.31). To be eligible for the payments there under, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5).

In order to be eligible for Kinship Care, the statute requires the Department, or its agent to perform an assessment and conduct an investigation under subs. (3p) of the statute. 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 day 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.

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. The petitioner's appeal was filed with the Division of Hearing and Appeals 95 days after the date of the negative action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition 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 9th day of January, 2013

\sDebra Bursinger
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 January 9, 2013.

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