



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

KIN/144937

PRELIMINARY RECITALS

Pursuant to a petition filed November 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 telephonic hearing was held on December 12, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's September 13, 2012 Kinship Care application for her maternal grand- daughter due to "no legal need."

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, Perez Pena, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. The petitioner is the maternal grandmother of TM (girl). Based upon mutual voluntary agreement with her daughter, TM has been receiving care from petitioner since about her birth.
3. On September 31, 2012, petitioner applied at the county agency for Kinship Care benefits for her care of TM.

4. The mother of TM is [REDACTED] [REDACTED] [REDACTED] is 23 years old now, but was only about 18 years old when TM was born.
5. [REDACTED] has one other child (a son), and she is caring for that child.
6. [REDACTED] is employed and has earned her GED degree. She receives W-2 benefits.
7. The father of TM is [REDACTED] [REDACTED] whose whereabouts are unknown in the Milwaukee area.
8. The county agency assessed the petitioner's Kinship Care application for her granddaughter on September 24, 2012. That September 24, 2012 home assessment of the petitioner's eligibility for Kinship Care benefits was conducted by Mr. Richard Williams of Perez-Pena Limited. Based upon that assessment with petitioner, [REDACTED] [REDACTED] does not have any current drug/alcohol problems or documented mental health issues. There is no evidence of any CPS involvement, and no evidence of any abuse or neglect of TM when her mother was caring for her.
9. The Bureau sent an October 19, 2012 notice to the petitioner stating that her Kinship Care application for TM was denied because there was no evidence of a legal need for Kinship Care benefits, when she could reside with and be cared for by her mother, [REDACTED] [REDACTED]

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. In Wisconsin, this benefit replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. Wis. Adm. Code, §§DHS 201.17; 201.31. 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 Petitioner apparently fits the definition of a "Kinship Care relative," which is stated at Wis. Stats., § 48.57(3m) (a).

The eligibility requirements for the Kinship Care Program are mandated by statute:

(am) From the appropriations under s. 20.435 (7) (b) and (o), the department shall reimburse counties for payments made under this subsection. A county department shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department for payments under this subsection and the county 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 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.

(Emphasis added) Wis. Stats. § 48.57.

In this case, the petitioner's Kinship case was somewhat weak. Petitioner indicated that this placement of TM with her was voluntary and without any CPS involvement. Petitioner explained that in the past [REDACTED] did not take much responsibility for her children, and she only actually resides with and cares for her other child. Petitioner also alleged that in the past [REDACTED] was "neglectful" of TM. However, there is no evidence of any CPS involvement. Basically, [REDACTED] is not a stable or mature parent. However, petitioner agreed that there was a mutual agreement between herself and [REDACTED] that she would care for TM.

When questioned by this Administrative Law Judge (ALJ) as to why there was any “legal need” for the petitioner to care for her grand-daughter, she was unable to provide any clear reasons other than that there was a mutual agreement between herself and [REDACTED], and that [REDACTED] was a rather unstable and irresponsible person. The petitioner was unable to refute that there was “no legal reason” that [REDACTED] could not care for TM along with her other child living with her. There was no evidence presented at the hearing to establish that there was a “legal need” for TM to have been placed with her grandmother for the past four years, pursuant to sec. 48.13 or 938.13, Wis. Stats.

There is no evidence in the record to establish that [REDACTED] [REDACTED] was unable to provide necessary care, food, clothing, medical care so as to seriously endanger the physical health of her daughter, TM, pursuant to sec. 48.13(10 or 10m), Wis. Stats. Accordingly, on the basis of the Exhibits, and the testimony at the December 12, 2012 hearing from the petitioner and Mr. Williams, the Bureau correctly denied the petitioner’s September 13, 2012 Kinship Care application for AO because her mother could care for her.

CONCLUSIONS OF LAW

The Milwaukee Bureau of Child Welfare correctly denied petitioner’s September 13, 2012 Kinship Care application due to “no legal need” pursuant to §48.57(3m)(am)1, Wis. Stats.

THEREFORE, it is

ORDERED

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 18th day of February, 2013

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on February 18, 2013.

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