



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of



DECISION

KIN/145354

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 20, 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 January 31, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for Kinship Care (KC) benefits for JH and KH.

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: Jazette Anderson, 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 October 2, 2012, the Petitioner submitted an application for KC benefits for her grandchildren, JH and KH. The children have been with the Petitioner since September, 2012. The children have the same father (the Petitioner's son). JH's mother is SS. KH's mother is MH.

3. On October 5, 2012, the agency assessor conducted a home visit with the Petitioner.
4. On October 8, 2012, the agency assessor conducted a phone interview with JH's mother, SS, who stated that she lives in Milwaukee and is unemployed. JH last saw his mother in July, 2012. SS has two children in her care. She has no AODA, CPS or mental health issues.
5. Prior to coming to the Petitioner's home in September, 2012, the children's father, KH, cared for them. He lives in Texas and is employed. He has no AODA, CPS or mental health issues. KH asked the Petitioner to take care of the children because of his work schedule.
6. On November 9, 2012, the agency issued a Notice of Non-Approval of KC Payment to the Petitioner finding that the children do not meet the criteria as children in need of protection or services.
7. KH moved from the Petitioner's home after the Petitioner filed the KC application. Petitioner is no longer seeking KC benefits for KH.
8. On November 20, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

The Kinship Care benefit is a public assistance payment of \$220 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. Stat. § 49.19). 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). See also, Wis. Admin. Code ch. DCF 58.

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.

The Petitioner's residence is suitable for JH. The Petitioner takes good care of him and has created a safe and stable environment for him. Accordingly, the placement satisfies the "need for the child's placement" criterion described at Wis. Stats. §48.57(3m)(am)1. However, the agency's basis for discontinuance was that the child does not meet one of the criteria at Wis. Stat. §48.13 and therefore does not meet the condition in §48.57(3m)(am)2.

The list of §48.13 criteria is as follows:

48.13 Jurisdiction over children alleged to be in need of protection or services. Except as provided in s. 48.028 (3), the court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (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), (f), or (g), 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) (a), (b), (c), (d), (e), (f), or (g), 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;
- (4m) Whose guardian is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;
- (5) Who has been placed for 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 petition 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. Stats. §48.13(10).

The Petitioner testified that JH's mother, SS, does not live in Milwaukee and she abandoned JH more than two years ago. She has seen JH one time in those two years. The agency assessor spoke with SS who stated that she is living in Milwaukee. The Petitioner testified that JH's father, KH, needed to look for a job so he brought the kids to her in September, 2012. He has not returned for the children. She testified that she does not know where he lives, if he has a stable residence or if he is employed. According to the assessor's report, the Petitioner reported that she was aware that KH had a stable residence in October, 2012. The Petitioner testified that JH saw his father in October in Mississippi and that JH and KH talk by phone approximately 3x/month.

This is a close case because it is possible that it could meet the criteria under § 48.13(2). However, based on the Petitioner's testimony that JH continues to communicate with his father, I cannot conclude that his father has abandoned him. In addition, the Petitioner testified that KH has been a good father so there does not appear to be any grounds under (10) or (10m) for neglect.

Based on all of the evidence, I cannot conclude that JH meets the definition in §48.13 of a child in need of protection or services or a child at risk of meeting the criteria in the future. He therefore does not meet the conditions of §48.57(3m)(am)2 for Kinship Care payments.

### **CONCLUSIONS OF LAW**

The agency properly denied KC payments to the Petitioner for JH.

**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 12th day of March, 2013

---

\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 12, 2013.

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