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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

KIN/145357

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**PRELIMINARY RECITALS**

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

The issue for determination is

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

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 August 30, 2012, the Petitioner applied for Kinship Care (KC) benefits for her two year old granddaughter [REDACTED]
3. On September 17, 2012, the agency assessor conducted a phone interview with [REDACTED] father, [REDACTED] [REDACTED] reported that he was unemployed, has AODA issues involving marijuana and has a history of

incarceration. ■■■ is currently on probation until 2014 for conspiracy to distribute cocaine. ■■■ reported that he visits his daughter every day and has a good relationship with her. ■■■ further reported that he does not have a stable residence and moves from home to home. ■■■ has four other children, none in his care.

4. The whereabouts of ■■■ mother is unknown. ■■■ has not seen her mother since birth.
5. The Petitioner has cared for ■■■ since birth.
6. On October 12, 2012, the agency issued a Notice of Non-Approval of KC Payment to the Petitioner finding that ■■■ does not meet the criteria of a child in need of protection or services and it is not likely that she will meet the criteria in the future.
7. On November 19, 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 ■■■. The Petitioner takes good care of her and has created a safe and stable environment for her. 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: . . .

(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;

...

Wis. Stats. §48.13.

The only criteria in §48.13 that appear to be applicable for consideration of this situation are (10) and (10m). [redacted] father has not abandoned her as there is evidence that he maintains contact with her. [redacted] told the assessor that he has daily contact with her. The Petitioner testified that he has less frequent contact, approximately every 2 – 3 weeks. The Petitioner also testified that [redacted] has no mental health issues and that she believes he would not harm [redacted] if she was in his care. However, she testified that he does not have a stable residence or a job.

This is a close case but there is no evidence that [redacted] has or would neglect [redacted] if she was in his care. I find it to be a close case because his AODA and incarceration history along with his lack of a stable home are a concern. However, without more evidence from the Petitioner that [redacted] would be at risk of being neglected, I must conclude that the agency properly found this to be a voluntary placement and that [redacted] does not meet the criteria of §48.13 and therefore does not meet the conditions for KC payments in §48.57(3m)(am)2.

**CONCLUSIONS OF LAW**

The agency properly denied the Petitioner’s application for KC benefits.

**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 13th day of March, 2013

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\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 March 13, 2013.

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