



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

KIN/145358

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 16, 2012, under Wis. Stat., §48.57(3m)(f), to review a decision by Perez-Pena Limited to discontinue Kinship Care, a hearing was held on February 6, 2013, by telephone.

The issue for determination is whether there is a need for placement of petitioner's granddaughter.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Richard Williams, Perez-Pena  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner received Kinship Care for the care of her now 8-year-old granddaughter in 2012 after the girl's father was incarcerated. In October, 2012, the agency began a reassessment.
3. Following the reassessment, by a notice dated November 9, 2012, the agency discontinued Kinship Care because the need for continued placement was not evident.
4. The girl's mother is in the community but is homeless and has made no effort to take custody of the girl. She has no mental health issues or alcohol/drug issues, but is unable financially to care

for her daughter. At the time of the assessment the father was back in the community and working, but he now is incarcerated again on a probation hold until approximately March, 2013.

### 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. 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).

For Kinship Care cases in which the relative is not a guardian appointed under Wis. Stat., §48.977, the conditions listed in Wis. Stat., §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. In Decision No. KIN-40/51985, dated May 22, 2002, the Department’s deputy secretary concluded that even if there was an apparent need for the placement, there still must be evidence that there is a risk to the child cited in Wis. Stat., §48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in Wis. Stat., §48.57(3m)(am), that there be a need for the placement and that the child be at risk of harm that could lead to a CHIPS case.

The primary criteria under §§48.13 and 938.13 at issue in Kinship Care cases are that the child needs protection because he has no parent or his parents have abandoned him, he has been a victim of abuse or is at risk of abuse, or the parents refuse to or are unable to provide necessary care, food, clothing, or shelter for reasons *other than poverty*. Other criteria under those sections are that the child has not been immunized, the parent is not seeking medical care for the child, the child is habitually truant while in the parent’s custody, or the child has committed a specified delinquent act while in the parent’s custody.

I agree with the agency’s decision. At this point the only thing that would prevent the mother from caring for her daughter is her financial situation. She has no reason to do so because petitioner is doing such a good job of raising the girl, but the Kinship law does not provide payments to a caretaker because she is the best caretaker. The benefit is paid if the parents are unable or unavailable to care for the child. Even if the mother were unavailable, the father would be available again as soon as he is released from his probation hold, so in effect both parents are in the picture and able to care for an 8-year-old child.

### CONCLUSIONS OF LAW

There is a lack of a need for the placement of petitioner’s granddaughter because the mother is an available alternate caretaker.

**THEREFORE, it is**

**ORDERED**

That 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 11th day of February, 2013

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\sBrian C. Schneider  
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 February 11, 2013.

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