



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
██████████████████
██████████████████████████████

REHEARING
DECISION

KIN/145874

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 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 February 20, 2013, at Milwaukee, Wisconsin. At the request of petitioner, her appeal was twice rescheduled. DHA issued a March 11, 2013 decision in the above-captioned case. In that decision, this ALJ concluded that The Milwaukee Bureau of Child Welfare correctly denied petitioner's October 31, 2012 Kinship Care application due to "no legal need" pursuant to §48.57(3m)(am)1, Wis. Stats.

The petitioner submitted a March 28, 2013 Rehearing Request with documentation to the Division of Hearings and Appeals (DHA) which provided new evidence (Court guardianship documents and Order for Protective Services under 48.13(10) which is strong enough to reverse the finding of "no legal need." Petitioner explained in her rehearing letter that she was not aware that she needed to provide those Court documents at the hearing. It appears that petitioner did not send a copy of those documents to Ms. Purpero for her review and response. Thus, DHA is sending a copy of those documents to Ms. Purpero for her review.

This ALJ sent a May 21, 2013 Rehearing Order to Ms. Purpero and the petitioner stating that pursuant to sec. 227.49, Wis. Stats., a rehearing was granted on the basis of a material error of law or fact or upon the **discovery of new evidence sufficiently strong to reverse or modify the order** and which could not have been discovered previously by due diligence (petitioner was unaware that she needed to discover those documents). That Order indicated that there was no need for a new hearing. Instead, Ms. Purpero was granted until June 4, 2013 to submit any written response to the petitioner letter and attached Court documents. If Ms. Purpero or the Department determines that the new evidence establishes a legal need for approving petitioner's October 31, 2012 Kinship application, it may so indicate in its responsive letter. In any case, after June 4, 2013, I will review both petitioner's rehearing request and documents and Ms. Purpero's response, and then issue a Decision.

Ms. Purpero faxed a June 3, 2013 letter to DHA and petitioner stating that: "Perez Pena Limited has carefully reviewed and researched the documents that were submitted as new evidence after the February 20, 2013 hearing. **The agency will stipulate and totally agree that Ms. ██████ ██████ should be eligible for Kinship Care payments for her grand-daughter.** Ms. ██████ ██████ was appointed the child's guardian under s. 48.977 on October 31, 2012 and the CHIPS order was terminated. Ms. ██████ has provided the necessary proof that she is the guardian and providing care and maintenance for her grand-daughter." (Emphasis added).

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, 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 TP (girl).
3. On October 31, 2012, petitioner applied at the county agency for Kinship Care benefits for her care of TP.
4. The mother of TP is ██████████. ██████████ is 19 years old now, but was only almost 17 years old when TP was born.
5. ██████████ is employed for ██████████ as a caregiver.
6. The father of TP is unknown.
7. The county agency assessed the petitioner's Kinship Care application for her granddaughter on November 14, 2012. That November 14, 2012 home assessment of the petitioner's eligibility for Kinship Care benefits was conducted by Ms. Stephanie Purpero of Perez-Pena Limited.
8. The Bureau sent a December 7, 2012 notice to the petitioner stating that her Kinship Care application for TP was denied because there was no evidence of a legal need for Kinship Care benefits, when she could allegedly reside with and be cared for by her mother, ██████████.
9. The petitioner filed a timely appeal and a hearing was held on February 20, 2013.
10. DHA issued a March 11, 2013 decision in the above-captioned case which concluded that The Milwaukee Bureau of Child Welfare correctly denied petitioner's October 31, 2012 Kinship Care application due to "no legal need" pursuant to §48.57(3m)(am)1, Wis. Stats.
11. The petitioner submitted a March 28, 2013 Rehearing Request with documentation to the Division of Hearings and Appeals (DHA) which provided new evidence (Court guardianship documents and Order for Protective Services under 48.13(10) which is strong enough to reverse the finding of "no legal need." See above Preliminary Recitals.

12. This ALJ sent a May 21, 2013 Rehearing Order to Ms. Purpero granting a rehearing, but only for Ms. Purpero to submit a written response to the petitioner's March 28, 2013 rehearing letter and attached Court documents. See above Preliminary Recitals.
13. Ms. Purpero faxed a June 3, 2013 letter to DHA stipulating that based upon the new evidence **the** agency will stipulate that Ms. [REDACTED] [REDACTED] was eligible for long term Kinship Care payments for her grand-daughter retroactive to her October 31, 2012 application under s. 48.977, Wis. Stats.

CONCLUSIONS OF LAW

Based upon Finding of Fact #13 above, the county agency stipulated that it was reversing its Kinship Care application denial, and concluded based upon the new evidence in this Rehearing that petitioner was eligible for Kinship Care payments for her grand-daughter retroactive to her October 31, 2012 application under s. 48.977, Wis. Stats.

THEREFORE, it is

ORDERED

The matter is remanded to Perez-Pena Limited (**Attention: Stephanie Purpero**) with instructions to take the necessary administrative action to approve petitioner's October 31, 2012 long term Kinship Care application and issue to the petitioner her Kinship Care benefits retroactive to October 31, 2012, within 10 days of the date of this Rehearing Decision.

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 24th day of June, 2013

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on June 24, 2013.

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