



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████████ ██████████  
██  
██

DECISION

KIN/146344

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 04, 2013, 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 March 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly denied the petitioner's application for Kinship Care benefits because the minor children do not meet any criteria as being in need of protection or services; and are not at risk of the same.

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

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. Approximately one year ago, he accepted into his custody and care his two minor grandchildren, "MO" and "AO" from their mother, his adult daughter

2. Lea [REDACTED], by mutual agreement.
3. On November 23, 2012, the petitioner filed an application with the Kinship Care Program seeking cash benefits for the care needs of MO and AO.
4. The Department assigned an assessor to perform a home visit, which was completed on December 5, 2012.
5. There are no child protection and/or service concerns about the care the biological mother provided in the past for MO or AO; Ms. [REDACTED] presently provides care for her four other children; Ms. [REDACTED] does not have any mental health conditions; and she does not abuse drugs or alcohol. Ms. [REDACTED] calls to speak with and/or check on her children every day.
6. On December 28, 2012, the Bureau of Milwaukee Child Welfare, by its Kinship Care agent, Perez-Pena, Ltd., issued a Notice to the petitioner informing him that his application for Kinship Care benefits was denied because no child meets any criteria as a child or juvenile in need of protection or services, and no child is likely to meet those criteria in the future.
7. The petitioner filed an appeal with the Division of Hearings & Appeals on January 4, 2013.

### 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. Wis. Admin. Code, §§ DHS 201.17; 201.31. To be eligible for the payments, 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/she has no parent or his/her parents have abandoned the child, he/she 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 conclude that the agency correctly denied Kinship Care. There is absolutely no evidence supporting that either of these children are in any way at risk of being abused or neglected by a parent or parents. See, Finding of Fact #4, above. Rather, their biological mother has maintained daily contact and continually made safe arrangements for their care needs, including placing them with the petitioner when it became necessary, under a voluntary arrangement. Both adults concluded that this arrangement was “for the best” for the family members at this time.

They are free to make such a commonsense arrangement, of course. But the Kinship Care Program was not intended to provide cash assistance to a family that has reached such a voluntary living arrangement. They have failed to demonstrate that the living arrangement is legally required or that the children have been neglected or abused; or are at risk of the same. Under these facts, the instant application must be denied.

### **CONCLUSIONS OF LAW**

The agency correctly denied petitioner’s Kinship Care application because the preponderance of the evidence in this record does not demonstrate that any of the children have been abused or neglected; or that any of the children are in any way at risk of being abused or neglected.

**NOW, 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 19th day of April, 2013

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\sPeter McCombs  
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 April 19, 2013.

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