



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/146445

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 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 February 07, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly determined that three of petitioner's grandchildren do not qualify for Kinship Care (KC) benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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.

2. On October 31, 2012, the Petitioner submitted an application for KC benefits for her grandchildren, GR, AR, DB.¹ The children have been with the Petitioner since October 4, 2012.
3. On November 15, 2012, the agency assessor conducted a home visit with the Petitioner.
4. On November 19, 2012, the agency assessor conducted a phone interview with NR, the mother of GR, AR, and DB, who stated that she lives in Milwaukee and is employed full time. NR has three children in her care, ages 2, 3, and 4. She has no AODA or mental health issues. Her only involvement with CPS occurred in May, 2012. A physician raised concerns regarding weight loss in one of NR's younger children, CPS investigated, and the matter was closed and the children were not removed from her care.
5. Prior to coming to the Petitioner's home in October, 2012, the children's father, [REDACTED], cared for them. He is presently incarcerated. According to the respondent, [REDACTED]'s sentence is anticipated to end in approximately September, 2014. He has no AODA, CPS or mental health issues.
6. NR asked the Petitioner to take care of the children, and is supportive of their placement with petitioner while [REDACTED] is incarcerated.
7. On December 21, 2012, the agency issued a Notice of Non-Approval of KC Payment to the Petitioner finding that GR, AR, and DB do not meet the criteria as children in need of protection or services.
8. On January 7, 2013, 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.

¹ Petitioner also cares for a fourth grandchild. That grandchild has the same father, but not the same mother as GR, AR, and DB. KC benefits were approved for that child.

The Petitioner's residence is suitable for GR, AR, and DB. The Petitioner takes good care of them 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 children do not meet one of the criteria at Wis. Stat. §48.13 and therefore do 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 the mother, NR, no longer has her own apartment, and currently lives with her mother and sister. NR provides no financial support for the children, and [REDACTED] had full custody of GR, AR, and DB prior to his incarceration. NR reported to the respondent that she does not have the income or housing to accommodate all of her children, and has not provided care to any of them for several years. The respondent noted, however, that NR does call her children 3-4 times per week, visits her children every weekend, and has all of her children for overnight visits a couple of times each year. It is notable that NR is presently caring for her three younger children. Accordingly, the petitioner has not substantiated nor proffered sufficient evidence for me to conclude that the children have been or will be neglected for a reason other than poverty.

Based on all of the evidence, I cannot conclude that GR, AR, and DB meet the definition in §48.13 of children in need of protection or services or children at risk of meeting the criteria in the future. They therefore do 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 GR, AR, and DB.

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 Madison,
Wisconsin, this 25th day of April, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on April 25, 2013.

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