



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

KIN/147258

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 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 via telephone on May 07, 2013.

The issue for determination is whether Bureau of Milwaukee Child Welfare ["BMCW"] was correct to discontinue Kinship Care payments to petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Kathleen O'Connell, Kinship Assessor, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the maternal grandmother and voluntary (there was no CHIPS involvement) legal guardian of DEIM (male; age 13 years); petitioner has cared for DEIM for the last 12½ years.

3. Petitioner was receiving Kinship Care payments for DEIM.
4. Following an annual reassessment, by a letter entitled *Re: Notice of Non-Approval of kinship Care Payment* and dated January 25, 2013, BMCW informed petitioner that the Kinship Care payments for DEIM could not be approved and would be discontinued.
5. The mother of DEIM [“LML”; age 29 years] is employed 18 hours per week as a school bus driver and pays child support into the Kinship Care fund; she currently lives with a friend; she has no drug or alcohol issues and no record of mental health issues; she has no history of involvement with Child Protection Services [“CPS”]; she was convicted of a misdemeanor criminal offense (conspiracy theft) in 2007 and received a sentence of probation (she was not incarcerated); she has had no police contact since 2007; she gets migraine headaches but is otherwise healthy; she visits DEIM frequently (weekly) and helps him with his homework.

DISCUSSION

Eligibility for Kinship Care payments is governed by state law. Wis. Stat. § 48.57(3m) (2011-12); Wis. Admin. Code § DCF 58.01 (September 2010). Under state law, a person must satisfy several requirements to be eligible for Kinship Care. Wis. Stat. § 48.57(3m)(am) (2011-12); Wis. Admin. Code § DCF 58.10 (September 2010). A person is eligible for Kinship Care only if he or she satisfies these requirements. The County discontinued Kinship Care in this case. Given the evidence in the record of this matter I must conclude that the County was correct to discontinue Kinship Care.

One of the requirements is that the child meets one or more of the criteria for being in need of protection or services (or would be at risk of meeting one or more of those criteria if the child were to remain in his or her home). Wis. Stat. §§ 48.13, 48.57(3m)(am)2. & 938.13 (2011-12); Wis. Admin. Code § DCF 58.10(3) (September 2010). The evidence in the record of this matter, as reflected in the above *Findings of Fact*, is that DEIM would not meet one or more of the criteria for being in need of protection or services (or would be at risk of meeting one or more of those criteria) if he lived with his mother (LML).

Petitioner testified that LML is in and out of homes and is not stable. She also states that LML “has a history of untreated emotional issues” but there is no documentation or other evidence of this. Petitioner’s testimony, alone, is not sufficient to show that DEIM would meet one or more of the criteria for being in need of protection or services (or would be at risk of meeting one or more of those criteria) if he lived with his mother (LML). Petitioner may again apply for Kinship Care if she obtains more evidence.

This *Decision* only means that petitioner cannot receive Kinship care payments for taking care of DEIM, it does not mean that DEIM cannot live with her.

CONCLUSIONS OF LAW

For the reasons discussed above, BMCW was correct to discontinue Kinship Care payments to petitioner.

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 10th day of May, 2013

\sSean P. Maloney
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 May 10, 2013.

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