



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

KIN/147628

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Dane County Department of Human Services in regard to Kinship Care, a hearing was held on April 4, 2013, at Madison, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's Kinship Care (KC) benefits, per a notice dated January 8, 2013.

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: Julie Swenson, Kinship Care social worker
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. The petitioner is the grandmother of ██████ ██████, age five, and ██████ ██████, age three. This decision may refer to them as "the children."

3. The father of the children is unavailable.
4. The mother of the children, [REDACTED] [REDACTED], consented to their placement with the petitioner in April 2012, because she was incarcerated. Upon the mother's release in August 2012, she lived at a halfway house. On December 12, 2012, [REDACTED] contacted the KC program to report that she was released, was now willing and able to care for her children, and that she was withdrawing her consent for the voluntary KC placement. By early January 2013, [REDACTED] was also residing in the same house as the petitioner and the children, although [REDACTED] was out of the petitioner's home by the date of hearing. As of the hearing date, [REDACTED] was residing with her boyfriend, and visited her children once or twice weekly.
5. The children have been residing with the petitioner since at least April 2012. Their residence with the petitioner *was* with the consent of their mother. The petitioner was supervising the children's medical and school status, and providing for their needs. The oldest child has ADHD, and is supposed to meet with a therapist. The children have not been adjudicated as juvenile delinquents, and are not truant.
6. The petitioner has received Kinship Care benefits for the children since April 2012. The county agency determined that the "best interests of the child" eligibility criterion was no longer met in January 2013, because the children's mother had withdrawn her consent for the KC placement. Therefore, the Department issued a discontinuance notice for the children to the petitioner on January 8, 2013.

DISCUSSION

I. INTRODUCTION.

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. 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.
(emphasis added)

Id., (3m)(am)1,2.

II. “NEED FOR THE PLACEMENT”

The code elaboration on the “need for the Kinship Care placement/living arrangement” is as follows:

DCF 58.10 Eligibility criteria. Before approving an application for a kinship care payment, an agency shall determine that all of the following criteria are met:

(1) NEED OF THE CHILD. (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least *one* of the following:

1. The child’s need for adequate food, shelter and clothing can be better met with the relative than with the child’s parent or parents.
2. The child’s need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child’s parent or parents.
3. The child’s need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child’s parent or parents.
4. The child’s need for a safe or permanent family can be better met with the relative than with the child’s parent or parents.

Wis. Admin. Code §DCF 58.10(1)(a). There is no assertion by the agency that the instant situation does not satisfy the “need for placement” code criteria above.

III. APPLICATION OF “BEST INTERESTS OF THE CHILD” CODE STANDARDS.

The Kinship Care code provisions also elaborate on what is required for the “best interests of the child” to be present. The agency correctly determined that the children’s mother withdrew her consent to the Kinship Care placement when she contacted the agency in December, 2012. As a result, the agency invoked the following portion of the “best interest” code language:

DCF 58.10 Eligibility criteria. Before approving an application for a kinship care payment, an agency shall determine that all of the following criteria are met:

(1) NEED OF THE CHILD.

...

(2) BEST INTERESTS OF THE CHILD.

(a) The proposed kinship living arrangement is in the best interests of the child. The agency shall determine that the kinship living arrangement is in the best interests of the child by proceeding as follows:

1. If the child is placed with the relative by the order of a court pursuant to jurisdiction under s. 48.13 or 938.13, Stats., by a tribal court in a matter related to a child in need of protection or services, by the action of the child welfare agency pursuant to a court order or by a child welfare agency which is the guardian of the

child, the agency shall assume that the living arrangement is in the best interests of the child and shall maintain a copy of the court order or other documentation in the kinship care relative's case record.

2. If the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child by making a reasonable effort *to contact all the child's custodial parents to determine that he or she or they are aware of and have consented to the living arrangement.* The effort to contact the child's custodial parents shall be made by mail and the agency may supplement this effort by phone or in person. *If consent is received, the kinship living arrangement is determined to be in the best interests of the child. ...*

Wis. Admin. Code §58.10(2)(a). I must reluctantly agree with the agency's position. Although the children are placed with the petitioner pursuant to a court guardianship order, the court's jurisdiction did not arise from either Wis. Stat. §48.13 or 938.13. The placement was not initiated by a child welfare agency, nor is a child welfare agency the children's guardian. Thus, there is no basis under the code language for me to be able to conclude that the Kinship Care placement is in the "best interests" of the children.

CONCLUSIONS OF LAW

1. There is a *need* for the children to be placed in a Kinship Care living arrangement, per Wis. Admin. Code §DCF 58.10(1)(a).
2. The agency correctly determined that placement of the children with a kinship care relative is not in the *best interest* of the children, per §DCF 58.10(2)(a)2, because the biological parent has not given consent to the placement.

THEREFORE, it is

ORDERED

That the petition 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 16th day of May, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 16, 2013.

Dane County Department of Human Services
DCF - Kinship Care
DCF - Kinship Care