



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/147681

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 25, 2013, under Wis. Stat., §48.57(3m)(f), to review a decision by the Langlade County Dept. of Social Services to terminate Kinship Care, a hearing was held on April 2, 2013, by telephone.

The issue for determination is whether the agency correctly determined that the placement no longer was in the child's best interests.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Robert Anderson

Langlade County Dept. of Social Services  
1225 Langlade Road  
Antigo, WI 54409-2795

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Langlade County.
2. Petitioner and his wife received Kinship Care for their great nephew until the county action. By a notice dated February 18, 2013 the county informed petitioner that Kinship Care would end March 1 because of actions contrary to the child's health, safety, and welfare.
3. In September, 2012, an allegation of abuse by petitioner against the child was substantiated after petitioner whipped the child with a belt. The substantiation was made by a county social worker

after an investigation. Petitioner was charged with a Class C felony; the charge was reduced after petitioner agreed to a First Offender's program. If petitioner succeeds in the program the charge will be dismissed.

### DISCUSSION

The Kinship Care benefit is a public assistance payment of \$215 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. Wis. Adm. Code, §§DHS 201.17; 201.31. 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).

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.

"Best interests" is defined in the Wisconsin Administrative Code as follows:

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.... If consent is received, the kinship living arrangement is determined to be in the best interests of the child. If the agency, after making reasonable efforts to contact all custodial parents, is unable to contact the custodial parents or custodial parent, the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the child.... In addition to determining that parental consent exists, the agency shall determine that both of the following conditions exist:

- a. The applicant's or kinship care relative's parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child.
- b. A minor child residing in the applicant's or kinship care relative's home has not committed any delinquent acts or other acts that endangered the safety of another child or that could adversely affect the child for whom the kinship care payment would be made or the applicant's or kinship care relative's ability to care for the child.

Wis. Admin. Code, §DCF 58.10(2)(a)2.

With the substantiation of abuse on the record, the agency had no choice but to discontinue the Kinship Care. Clearly abusing the very child for whom Kinship payments are made is an act contrary to the

child's health, safety, and welfare. With that finding the arrangement by definition is against the child's best interests, and the arrangement no longer is eligible for Kinship Care coverage.

**CONCLUSIONS OF LAW**

The agency correctly discontinued Kinship Care for petitioner's great nephew after petitioner was found to have physically abused the child.

**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 April, 2013

---

\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on April 10, 2013.

Langlade County Department of Social Services

DCF - Kinship Care

DCF - Kinship Care