



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

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

DECISION

KIN/147801

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 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 April 24, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether there is a need for the placement of petitioner's grandchildren.

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: Jazette Anderson, 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. Petitioner applied for Kinship Care on January 30, 2013, for her grandchildren, ages 5 and 6. The agency denied the application by a letter dated March 1, 2013.
3. Petitioner's son is the father of petitioner's grandchildren who are the subject of this appeal. The father presently lives with his sister in Milwaukee, Wisconsin, near to petitioner's home.

4. Petitioner's son does not have drug, alcohol, or mental health issues. There has been contact with Child Protective Services. He remains in regular contact with petitioner and his children.

### 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 replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. Wis. Adm. Code, §§HSS 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. 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 has no parent or his parents have abandoned him, he 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.

Petitioner's situation does not fit the §48.13 criteria. Her son has not abandoned the children, and there is no risk of abuse or neglect. Petitioner testified that she applied for Kinship because their mother's whereabouts were uncertain, and the father is unemployed and otherwise unable to care for his children. However, being unable to support the child due to poverty specifically is a situation that does not meet the criteria. If petitioner's son had custody of the children he would be eligible for welfare benefits for the children.

The record notwithstanding, in testimony at hearing the respondent noted that it was learning for the first time that the children's father was not living in petitioner's home. The respondent's representative stated that, had the father *not* indicated that he was living with petitioner, she would have approved the Kinship application for petitioner. As such, I will remand this matter to the respondent to conduct a new eligibility screening to determine whether petitioner's application should be approved.

**CONCLUSIONS OF LAW**

Petitioner does not live with her son (the father of the grandchildren who are the subject of the Kinship application).

**NOW, THEREFORE, it is ORDERED**

That this matter shall be remanded to the respondent to conduct a new eligibility screening to determine whether petitioner's Kinship application should be approved. Upon completion of the screening, petitioner shall be notified of the respondent's determination in writing, and shall again be afforded appeal rights with regard to the new determination. All actions required to be undertaken by the respondent hereunder shall be completed within 10 days of the date of his Decision.

**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 6th day of June, 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 June 6, 2013.

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