



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████████  
██████████  
██████████

DECISION

KIN/147840

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 05, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Walworth County Department of Human Services in regard to Kinship Care, a hearing was held on March 28, 2013, at Elkhorn, Wisconsin.

The issue for determination is

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: Michelle Snead, Kinship Care Worker  
Walworth County Department of Human Services  
W4051 County Rd NN  
Elkhorn, WI 53121-1006

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Walworth County.
2. Petitioner applied for Kinship Care renewal on May 17, 2012, for her three grandchildren. Only petitioner and the three grandchildren were listed as residents of petitioner's home.
3. Petitioner's adult daughter, the mother of the three minor children who are the subject of this Kinship Care matter, resided with petitioner sporadically between June, 2012 and February, 2013.

4. Petitioner's adult son moves in with petitioner in approximately October, 2012.

### 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.

- I. Residence of Petitioner's adult daughter, the mother of the three minor children who are the subject of this Kinship Care matter.

The respondent submitted well-documented evidence that petitioner's adult daughter was living in petitioner's home. Evidence included police reports, child support information, and a FoodShare application prepared by the adult daughter. In all instances petitioner's daughter was noted to be living at petitioner's home. Additionally, at the time of the home visit, petitioner's daughter answered the door of the home, and went upstairs to change her clothing.

Petitioner countered via her testimony that her daughter is a drug addict and liar. She conceded that some of her daughter's things are kept at her home, but asserts that her daughter has never stayed for more than a few weeks. Petitioner also submitted letters from other family members indicating that petitioner's daughter has not lived at petitioner's home.

Based on the totality of the record before me, I conclude that the respondent reasonably concluded that petitioner's adult daughter, and the mother of the three minor children who are the subject of this Kinship Care matter, did reside, at least sporadically with petitioner.

## II. Resident adults.

A KC relative shall notify the agency of the intent of a person to become a resident of the KC relative's home when that intention becomes known, if that information is available, or within 2 days after that person moves in. DCF 58.04 (2)(b). Petitioner's adult son<sup>1</sup> returned to her home in approximately October of 2012. This information was not reported to the respondent until March of 2013 (via petitioner's appeal submission identified as Exhibit 1).

While I do not question that the failure to provide notice was unintentional, petitioner did concede that she did not notify the respondent because she did not know that she was required to do so. The respondent countered that the KC application contains information regarding this notice requirement.

## III. Social Security beneficiaries.

Kinship Care payments are not available when the child for whom the kinship care relative is providing care receives supplemental security income (SSI) under 42 USC 1381 to 1383c or state supplemental payments under Wis. Stat. § 49.77. Wis. Stat. § 48.57(3m)(am)6.

In this case, the county agency's learned that petitioner was not eligible to receive KC payments for one of her grandchildren because the child is currently receiving SSI benefits. As stated above, the rules clearly state that the KC benefits are not available in these types of cases and there are no exceptions to this provision. Therefore, I must conclude that petitioner is not eligible for Kinship Care benefits for this grandchild because the child is currently receiving SSI benefits.

The constitution of petitioner's household may have been fluid in the recent past, and may now be less so. I note that petitioner may reapply for KC benefits at any time; nothing in this decision will bar her from submitting such an application.

### **CONCLUSIONS OF LAW**

1. Petitioner's adult daughter, the mother of the three minor children who are the subject of this Kinship Care matter, did reside, at least sporadically with petitioner.
2. Petitioner failed to notify the respondent that her adult son moved into her home.
3. Petitioner is not eligible for Kinship Care benefits for her grandchild who is currently receiving SSI benefits.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition for review 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

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<sup>1</sup> Another adult son also purportedly lived with petitioner, but the record is unclear as to exactly when and for how long he was present there. This is concerning as it was noted at hearing that this son does have a criminal record.

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 1st day of July, 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 July 1, 2013.

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