



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION

KIN/147976

PRELIMINARY RECITALS

Pursuant to a petition filed March 13, 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 (KC), a hearing was held on April 24, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied KC benefits to the Petitioner for the months of February and March, 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: Stephanie Purpero, 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. The Petitioner submitted an application for KC benefits for her three grandchildren who resided with petitioner from approximately September, 2012 through mid-March, 2013. The mother of

the children moved to Texas in September, 2012. The fathers of the children are believed to live in the Milwaukee, WI area, but no contact information is known.

3. On February 27, 2013, the agency assessor conducted a home visit with the Petitioner.
4. On March 1, 2013, the agency assessor conducted a phone interview with the children's mother, [REDACTED], who stated that she lives in Houston, TX, and is employed. She has no AODA, CPS or mental health issues.
5. On March 8, 2013, the agency issued a Notice of Non-Approval of KC Payment to the Petitioner finding that there was no need for the placement, and that the children do not meet the criteria as children in need of protection or services.
6. On March 13, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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 replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment (see, Wis. Stat. § 49.19). 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.

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

Based upon information received from the children's mother, the agency determined that there was no need for the placement with the KC relative. Specifically, respondent noted:

[REDACTED] explained that the caregiver had agreed to temporarily keep her children while she got herself situated in Texas, but that this was only ever supposed to be a temporary living arrangement. ... [REDACTED] went on to explain that she was just tired of Milwaukee and living here and decided to go back to Texas. However, she had the girls enrolled in school full-time here, and [REDACTED] stated that the only reason she left her children with the caregiver is so that they would not have to miss any school while she got situated back in Texas.

Exhibit 2.

Petitioner testified that she felt that her grandchildren were abandoned, and that was why she applied for KC. I note that nothing in the record corroborates this testimony, which is specifically refuted by comments of the children's mother. Testimony at hearing indicated that the children have been returned to their mother. I can discern no grounds for finding petitioner eligible for KC benefits. I conclude that the respondent properly found that petitioner was not eligible for KC benefits based upon the evidence in the record indicating no need for the placement.

Since I have already determined that the agency was correct in determining that there was no need for the placement, I do not address the agency's secondary determination that the children do not meet one of the criteria at Wis. Stat. §48.13 and therefore do not meet the condition in §48.57(3m)(am)2.

CONCLUSIONS OF LAW

The agency properly denied Kinship Care payments to the Petitioner for her grandchildren ([REDACTED] 's children), as there was no need for the children to be placed with the Kinship Care relative .

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 28th day of June, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

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

The preceding decision was sent to the following parties on June 28, 2013.

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