



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/148343

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 26, 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 May 08, 2013, at Milwaukee, Wisconsin. The record was held open for the Department to obtain certain records and submit them to the ALJ.

The issue for determination is whether the Department erred in denying kinship care payments to petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner applied for kinship care.

3. The Department investigated and denied payments because it could not establish that the child did or would meet the criteria for a child in need of protection or services.
4. The Department denied kinship payments.
5. Petitioner appealed.
6. At hearing, the caregiver made representation that indicated that the child would be in need of protection or services if returned to the mother's home. At hearing, the Department did not have records regarding such allegations. Upon this ALJ's request to obtain and review, the Department representative obtained two CPS reports dated 8/21/12 and 4/1/13. These were submitted to the ALJ and the Department representative contacted this ALJ by telephone. The Representative informed this ALJ that the agency now believes that the child meets the ChiPS criteria. The representative indicated that the agency could not reverse its decision and would need an order from this ALJ in this matter to do so.

### **DISCUSSION**

Given the facts of this case, and upon detailed review of the CPS reports, I find that the Department did not meet its burden of establishing that a denial of kinship care was justified on the basis of the child not meeting ChiPS criteria. The Department has essentially conceded this. Therefore, kinship payments should be granted.

### **CONCLUSIONS OF LAW**

The Department erred in denying kinship care because the child would likely be in need of protection or services if returned to the parent's home.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the Department and its agent with instructions to grant kinship care payments retroactive to the date of the 1/4/13 application. This action should be completed within 10 days.

### **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 12th day of July, 2013

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\sJohn P. Tedesco  
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 12, 2013.

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