



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/148947

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 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 23, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency was correct in denying petitioner's application for Kinship Care benefits.

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:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the maternal step-aunt of K.W. She started caring for the child approximately three weeks prior to her application for Kinship.

3. The mother of the child is [REDACTED]. The father is [REDACTED] [last name unknown].
4. Petitioner applied for Kinship on March 11, 2013.
5. On April 19, 2013 the Kinship agency issued notice to the petitioner informing her that her application for Kinship Care benefits had been denied because the child did not meet the criteria of a child in need of protection or services.
6. At the time of application, the child did not meet the criteria of a child in need of protection or services.

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.

In the situation of a new application, the burden of proof lies with the applicant to demonstrate that she met these conditions, but that the agency wrongly denied her.

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, italics added.

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 §48.13 criteria are that the child needs protection because she has no parent or her parents have abandoned her, she 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.

The decision to deny the application was based on the fact that it appeared to be a voluntary arrangement between the child’s mother and the petitioner because the mother did not have the means to provide as well as she would like for this child. She had moved to Texas in an attempt to get back on her feet, but returned to Milwaukee about a month later because things did not work out in Texas. There was no

information about the father to determine his whereabouts. Unfortunately for petitioner, these are not reasons under the law to award Kinship payments.

Again, the §48.13 criteria are that the child needs protection because he has no parent or her 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. The fact that the mother does not have the financial means to care for her child to the standard she would like does not make petitioner eligible for Kinship payments. She has two other children in her care for which there is no CHIPS criteria to show any risk to this child. The above cited statutory section does not take “fairness” into account, and administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written.

The application process and subsequent decision is made at “a snapshot in time”. In other words, I must look at when the agency made its decision, and was the decision made correctly at that time. Based on the information at the time, it does not meet the requirements for payment under the Kinship Care program. This does not mean that petitioner is not taking good care of the child and that he can no longer stay with petitioner, but rather that the evidence does not yet support a finding that the mother cannot do the same for reasons other than poverty. Petitioner can reapply at any time.

CONCLUSIONS OF LAW

The agency was correct in denying petitioner’s application for Kinship Care benefits.

THEREFORE, it is

ORDERED

The petition for review herein be 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 Milwaukee,
Wisconsin, this 26th day of July, 2013

\sKelly Cochrane
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 26, 2013.

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