



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████  
██████  
██████████████████

DECISION

KIN/149369

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 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 regards to the discontinuance of Kinship Care benefits, a telephone hearing was held on June 13, 2013, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held pend for 10 days; and extended for 7 more days.

The issue for determination is whether the Department, by its agents, correctly discontinued Kinship Care benefits for T.R., C.C. and V.G., three minors in the petitioner's care.

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: ██████████ ██████████, Kinship Care Worker  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She is the maternal grandmother of three minor grandsons, "T.R." (age 9); "C.C." (age 8); and "V.G." (age 12). All three have primarily resided with her since each's birth; but from time to time their biological mother in common, ██████████ ██████████ (28), has also resided in the petitioner's home for unknown periods of time.
2. The petitioner has provided all food, clothing, shelter, medical cares, parental cares, educational contacts, and all guidance to T.R., C.C. and V.G. since their respective births.

3. The petitioner was receiving Kinship Care benefits for the care needs of T.R., C.C., and V.G. in at least April, 2013; and subject to annual re-certification of eligibility. See, Exhibit #1.
4. The agency sent home assessor [REDACTED] [REDACTED] to meet with the petitioner at a home visit on April 16, 2013. At that time, the petitioner reported that [REDACTED] uses the petitioner's residence address to receive her mail frequently. In addition, [REDACTED] made subsequent phone contact with biological mother, [REDACTED], who reported that she lives with an aunt, [REDACTED] [REDACTED] in a duplex in Milwaukee County. [REDACTED] has a two bedroom unit upstairs, where she lives with and cares for two more of her minor biological children (ages 1 & 2 years). [REDACTED] [REDACTED], the aunt, lives in the first floor unit. See, Exhibit #1.
5. [REDACTED] reported to the assessor that she does not have a criminal record, a record of Child Protection & Services involvement or contact for *any* of her five children, or any alcohol or drug abuse problems. See, Exhibit #1. Rather, she asserts that her mental health is fragile because of her abduction and rape in 2005, as described in Finding #10, below, and this makes her unsuited to have the three children in [REDACTED]'s care live with her and her two toddlers. She does not receive any mental health treatment or medications, and has no plan for re-unification with her children in [REDACTED]'s care.
6. [REDACTED] receives W-2 cash benefits for her household composed of herself and two minor children; plus \$515 in FS per month, and medical assistance coverage for all three.
7. The petitioner has been receiving \$220 per month in Kinship Care benefits for *each* of four children, including T.R., C.C. and V.G., plus one other minor not the subject of this appeal; plus Social Security Disability Insurance Benefits in an amount unknown in this record. See, Exhibits #4 & #1.
8. [REDACTED] telephones to talk with, or check on the status of, her children with [REDACTED] at least weekly. She visit's the caregiver's home 2-3 times per month and visits with [REDACTED] and her three children.
9. The whereabouts of the father of C.C. is unknown. The identities of the fathers of T.R. and V.G. are unknown.
10. Based upon the evidence in the hearing record, [REDACTED] does not carry a known mental health diagnosis; and she is not currently treated for any mental health issues. Rather, her grandmother asserts that [REDACTED] was abducted at gunpoint and raped in December, 2005, and that she has never been the same since in ways otherwise unspecified.
11. On May 10, 2013, the Department by the Kinship Care program issued a discontinuance letter to the petitioner informing her that her re-application for Kinship Care benefits for T.R., C.C., and V.G. was discontinued because the children do not meet any of the criteria to be considered a child or juvenile in need of protection or services, or likely to meet such criteria in the future. See, Exhibit #2.
12. On May 13, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the Department's action of May 10, 2013, to discontinue Kinship Care benefits for T.R., C.C. and V.G.
13. The petitioner is the guardian of the person of T.R. and C.C. under probate court letters of guardianship pursuant to Wisconsin Statutes, Chapter 54, not under Wisconsin Statutes, Chapter 48. There is no evidence that she is an appointed guardian for V.G.

### DISCUSSION

The Kinship Care benefit is a public assistance payment of \$215 per month per child paid to a qualified relative who bears no legal responsibility to support the child. 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 § 48.57(3m)(am) must be met. The pertinent “conditions specified in par. (am)” 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.

(Emphasis added) *Id.*, (3m)(am)1, 2.

Here, the petitioner’s guardianships are not under Wis. Stat. § 48.977, but under Wis. Stat., Chapter 54. (Such guardianship status **does not** qualify her for **long-term** Kinship Care under Wis. Stat. 48.57(3n), et. seq.; this is a *separate class of Kinship Care* not at issue in this appeal.)

The Department of Children and Families has set forth a policy pertinent to these standards as follows:

As the relative who receives the Kinship Care payment has no legal obligation to support the children for whom she is caring, the Kinship Care statute mandates there be an established need for the relative to provide care for the children. In addition to being in the best interests of the child, the agency must determine that the child would be at risk of abuse or neglect if returned to his or her natural parent.

DHFS Policy Memo, *Vol. 2 of the Kinship Care Questions and Answers*, p.23, question 9, issued January 5, 1998. The abuse and neglect statutory sections referenced above – Wis. Stat. § 48.13 and Wis. Stat. § 938.13, both concern children in need of protection or services. To meet that standard, a child must be the victim of abuse or at substantial risk of becoming a victim of abuse. Or a child’s parent must refuse, neglect, or be unable (for reasons other than poverty) to provide necessary care, food, clothing, medical or dental care so as to seriously endanger the physical health of the child. Wis. Stat. § 48.13(3),(3m),(10).

In addition, effective February 1, 2002, the Wisconsin Administrative Code, Chapter 58, was repealed and recreated to codify the Kinship Care program. Wis. Adm. Code, § HFS 58.10(1) describes the “need” for placement as follows:

- (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:
  1. The child’s need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
  2. The child’s need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
  3. The child’s need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.

4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

In Decision No. KIN-40/51985, dated May 22, 2002, the Department's deputy secretary concluded that even when the assessor finds that one of the four grounds cited above are met, 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) (i.e., "need" and "best interests") *and* that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHIPS) case.

This is a close case. In the past, the caregiver *did* qualify and receive Kinship for these three children. But circumstances have changed. Birth mother [REDACTED] lives in the community in a stable residence. She is caring, apparently without any reported problems or concerns, for two relatively recently born minor children (1, and 2 years ago). She has significant support services through public assistance, i.e., cash benefits, FoodShare benefits, and medical assistance. She is living in the duplex home of a relative for which she pays modest rent. She has regular repeated contact with the caregiver, and more importantly, with her three children in [REDACTED]'s home, by telephone and in person.

Based on the foregoing evidence, the preponderance of the evidence causes me to conclude several things. The need for the living arrangement is established under the four prong test for "need", because [REDACTED] provides a better home for the three children. In addition, it is apparent that the placement is the most beneficial in terms of stability, care, and long-term parental guidance, i.e., in their best interests.

However, this fact pattern no longer presents enough to justify the continuation of Kinship to [REDACTED]. [REDACTED] is older and more stable (28 years old now, versus 18 years old when her first child was born). She has no known criminal or CPS issues, and she does not receive any treatment for any putative mental health concerns. She cares for two toddlers in a stable home. She has an income stream and FoodShare assistance, as well as medical coverage. I can only conclude on this record that there is no evidence that supports any conclusion that [REDACTED] would place any of these children at significant risk of neglect for food, clothing, shelter or medical/dental cares. Rather, she has regular contact and takes an interest in the status of her children and her relationship with her extended family. And she has the means and stability to do so.

Therefore, I must ultimately conclude that the county agency correctly discontinued petitioner's benefits for T.R., C.C., and V.G., effective May, 2013 because these children do not meet any of the criteria to be considered a child or juvenile in need of protection or services; nor are they likely to meet such criteria in the future. Failing this last part of the eligibility test, even while passing the need and best interest thresholds, means she is ineligible for Kinship Care benefits.

#### **CONCLUSIONS OF LAW**

That the Department correctly discontinued petitioner's Kinship Care benefits for T.R., C.C. and V.G., effective May, 2013.

**NOW, THEREFORE, it is ORDERED**

That the petition for review herein be, and the same 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 11th day of July, 2013

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\sKenneth D. Duren, Assistant Administrator  
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 11, 2013.

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