



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

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In the Matter of

██████ ██████  
██████████████████  
████████████████████

DECISION

KIN/150089

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 17, 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 telephonic hearing was held on July 24, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly denied the petitioner's May 11, 2013 Kinship Care application for her paternal grandson due to "no legal need."

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: Kathleen O'Connell, Perez Pena Kinship Care Worker  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. The petitioner is the paternal grandmother of JSN (boy) who is about 10 months old. Based upon mutual voluntary agreement with her son, JSN has been receiving care from petitioner since about three months of age.

3. On May 11, 2013, petitioner applied at the county agency for Kinship Care benefits for her care of JSN.
4. The father of JSN is JN who is 16 years old and is attending high school.
5. JN and JSN reside in the home with the petitioner (JN's mother).
6. The mother of JSN is SS who is 17 year old and is attending high school.
7. The petitioner works as a CNA third shift when her son (JN) can be at home and care for JSN.
8. The county agency assessed the petitioner's Kinship Care application for her grandson on May 21, 2013. That May 21, 2013 home assessment of the petitioner's eligibility for Kinship Care benefits was conducted by Ms. Kathleen O'Connell of Perez-Pena Limited. Based upon that assessment with petitioner, neither JN nor SS have any drug/alcohol problems or documented mental health issues. There is no evidence of any CPS involvement, and no evidence of any abuse or neglect of JSN when either parent was caring for JSN.
9. The Bureau sent a June 14, 2013 notice to the petitioner stating that her Kinship Care application for JSN was denied because there was no evidence of a legal need for Kinship Care benefits, when he could reside with and be cared for by his father or mother.

### 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. In Wisconsin, this benefit replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. Wis. Adm. Code, §§DHS 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). The Petitioner apparently fits the definition of a "Kinship Care relative," which is stated at Wis. Stats., § 48.57(3m) (a).

The eligibility requirements for the Kinship Care Program are mandated by statute:

(am) From the appropriations under s. 20.435 (7) (b) and (o), the department shall reimburse counties for payments made under this subsection. A county department shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department for payments under this subsection and the county 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 interests of the child.

2. The county 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) Wis. Stats. § 48.57.

In this case, the petitioner's Kinship case was rather weak. Petitioner indicated that this placement of JSN with her was voluntary and without any CPS involvement. Petitioner explained that when JSN was residing with his mother, SS, there was a lack of stability in their residence and thus all parties agreed that it would be best for JSN and JN to reside with petitioner in her home. Both parents are minors, however there is no evidence of any CPS involvement. The petitioner agreed that there was a mutual agreement between herself and her son and SS that she would care for JSN along with her son and SS.

When questioned by this Administrative Law Judge (ALJ) as to why there was any “legal need” for the petitioner to care for her grandson, she was unable to provide any clear reasons other than that there was a mutual agreement between herself and JN and SS that as students in high school JSN needed stability and a safer place to live. The petitioner was unable to refute that there was “no legal reason” that JN and SS could not care for JSN. There was no evidence presented at the hearing to establish that there was a “legal need” for JSN to have been placed with his grandmother pursuant to sec. 48.13 or 938.13, Wis. Stats.

There is no evidence in the record to establish that JN and SS were unable to provide necessary care, food, clothing, medical care so as to seriously endanger the physical health of their son, JSN, pursuant to sec. 48.13(10 or 10m), Wis. Stats. Accordingly, on the basis of the Exhibits, and the testimony at the July 24, 2013 hearing from the petitioner and Ms. O’Connell correctly denied the petitioner’s May 11, 2013 Kinship Care application for JSN because his father and mother could care for him.

### **CONCLUSIONS OF LAW**

The Milwaukee Bureau of Child Welfare correctly denied petitioner’s May 11, 2013 Kinship Care application due to “no legal need” pursuant to §48.57(3m)(am)1, Wis. Stats.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby 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 15th day of October, 2013

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\sGary M. Wolkstein  
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 October 15, 2013.

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