



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/150144

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Racine County Department of Human Services in regard to Kinship Care, a hearing was held on July 22, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner's Kinship Care benefits because of drug usage.

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: Brittany Sutton, Yvette DeGeorge
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. In January 2012 Petitioner's Kinship Care case was reviewed and it was discovered that Petitioner had drug offenses which the agency considered to be a bar to receipt of Kinship Care. Rather than discontinuing Kinship Care the agency decided to monitor Petitioner for drug usage.
3. Petitioner provided urine samples on the following dates with the following positive results:
2/15/12 – cocaine and opiates

- 5/29/12 – cocaine and opiates
- 1/02/13 – cocaine, opiates and THC
- 4/19/13 – cocaine and opiates
- 4/22/13 – THC
- 7/17/13 – THC

4. In March 2013 the agency offered Petitioner services to assist Petitioner with cessation of drug usage. She declined.
5. The agency sent Petitioner a letter dated June 7, 2013 that informed Petitioner that her Kinship Care was being discontinued because of the continued drug usage. The agency knew Petitioner was in a methadone program so did not consider the positive opiate results in making the determination to discontinue benefits.
6. Petitioner admits to the use of marijuana.

DISCUSSION

The following Wisconsin Administrative Code provision is pertinent here:

DCF 58.04 Requirements for applicants and kinship care and long-term kinship care relatives.

...

(2) CRIMINAL BACKGROUND CHECK.

...

(c) Agencies shall conduct criminal background checks pursuant to the requirements of s. 48.57 (3p), Stats., and shall consider whether any history, arrests or convictions might adversely affect the child or the applicant’s or kinship care or long-term kinship care relative’s ability to care for the child.

...

Wis. Admin. Code, § DCF 58.04(2).

Rather than denying Kinship Care benefits pursuant to the above, the agency agreed to provide Kinship Care benefits to Petitioner provided she demonstrate that she was not using drugs by providing drug screening tests. Petitioner tested positive for narcotics, opiates and THC as noted at Finding # 3. Petitioner argues that the testing procedure was flawed and that the tests results are not hers. She admits, however, that she was using marijuana as she does not consider that to be an illegal drug.

I am sustaining the agency discontinuance of Petitioner’s Kinship Care. The drug screens show a pattern of illegal drug usage. Even if there were a problem with the processing of a particular screen, I do not find it likely that there was a problem with all of them. Further, Petitioner admits to usage of marijuana so the screens were certainly correct as to that usage. Finally, the use of marijuana is illegal and sufficient basis by itself to sustain the discontinuance as a history affecting Petitioner’s ability to care for a child.

CONCLUSIONS OF LAW

That the agency correctly discontinued Petitioner’s Kinship Care benefits because of a history of illegal drug usage as that does affect ability to care for a child.

THEREFORE, it is

ORDERED

That this appeal 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 Milwaukee,
Wisconsin, this 11th day of October, 2013

\sDavid D. Fleming
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 11, 2013.

Racine County Department of Human Services
DCF - Kinship Care
DCF - Kinship Care
