



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

SGA/150218

PRELIMINARY RECITALS

Pursuant to a petition filed June 21, 2013, under , to review a decision by the Dunn County Department of Human Services in regard to Adoption Assistance Program, a hearing was held on August 19, 2013, at Menomonie, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals can overturn a circuit court's decision concerning a subsidized guardianship.

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: Sara Steingruebl

Dunn County Department of Human Services
808 Main Street
PO Box 470
Menomonie, WI 54751

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Dunn County.
2. The petitioner have been the guardian of B.C. and K.C. since 2011.

3. On April 22, 2013, Dunn County Circuit Court Judge William Stewart signed an amended Dispositional Order Appointing Guardian in regard to the two children. That order made the following finding:

The determinations made under §48.623(1), Wis. Stats., that the guardian is eligible to receive monthly subsidized guardianship payments are confirmed.

4. The county agency has refused to carry out the Court's order making the petitioner a subsidized guardian because it believes that the order is incorrect.

DISCUSSION

Guardians can receive subsidies under certain conditions. Wis. Stat. § 48.623, The petitioner has been a guardian for two siblings since 2011. Recently, she went to Dunn County Circuit Court to have the guardianship order amended to make her a subsidized guardian. The Court granted her request and signed an amended Dispositional Order Appointing Guardian in regard to the two children on April 22, 2013. When the petitioner requested that the county agency provide the subsidy ordered by the Court, it refused because Wis. Stat. § 48.623(1)(b)5 lists as one of the requirements for receiving the subsidy that “[p]rior to being named as the guardian of the child, the guardian entered into a subsidized guardianship agreement under sub. (2) with the county department or department.” In this case the petitioner could not enter into an agreement with the county before being named guardian because the program did not exist at that time.

I have no authority to overturn a circuit court order, and a county agency has no authority to ignore one. If the agency disagrees with the Court's order, it must either request that the Court reconsider its order or appeal that order to a higher court. Simply ignoring the order could lead to a contempt of court citation, which in turn could lead to a fine or incarceration. I note that the order in my decision gives the agency 10 days to certify that it has complied with the circuit court's order. Nothing in my decision can legally prevent the circuit court from imposing sanctions against the county agency or its workers before then.

CONCLUSIONS OF LAW

The circuit court's order requiring the county agency to subsidize the petitioner's guardianship is binding upon the agency and cannot be reversed by the Division of Hearings and Appeals.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it certify that it has complied with the circuit court order requiring it to subsidize the petitioner's guardianship. The agency shall provide the payments retroactive to the first date after April 22, 2013, that subsidized guardianship payments are generally issued.

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 October, 2013

\sMichael D. O'Brien
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.

Dunn County Department of Human Services
Subsidized Guardianship Assistance - DCF