



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

KIN/151249

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 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 September 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner's Kinship Care benefits effective August 12, 2013, due to no longer any "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: Stephanie Purpero, 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 maternal grandmother of her granddaughter FC and grandson MC. Her two grandchildren have been receiving care from the petitioner for about the past 11 years, based upon a voluntary arrangement with her daughter, ██████ ██████, by mutual agreement.

3. On July 11, 2013, petitioner's Kinship Care (KC) case was assigned to Kinship Care assessor Jazette Anderson for a reassessment of her Kinship Care eligibility for her care of FC and MC.
4. The mother of FC and MC is [REDACTED].
5. [REDACTED] [REDACTED] receives W-2 benefits. [REDACTED] is providing care for her three other children, and is capable of caring for FC and MC as well. She has a stable residence in Milwaukee, WI.
6. The father of FC and MC is [REDACTED] who resides in [REDACTED]. He is employed as a pastor and could care for FC and MC.
7. The county agency assessed the petitioner's Kinship Care ongoing eligibility on July 11, 2013. That July 11, 2013 home assessment of the petitioner's eligibility for Kinship Care benefits was conducted at petitioner's home with petitioner by Ms. Jazette Anderson of Perez-Pena Limited. Based upon that assessment with petitioner, [REDACTED] [REDACTED] does not have any drug/alcohol problems. She has some mental health issues, but there is no evidence that those issues prevent her from caring for her three other children. There is no evidence of any abuse or neglect of FC or MC when she has been caring for them.
8. The Bureau sent an August 2, 2013 notice to the petitioner stating that her Kinship Care benefits would discontinue effective August 12, 2013, because there was no evidence of a legal need for continued Kinship Care benefits for FC and MC when they could reside with and be cared for by their mother, [REDACTED] [REDACTED].

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 agreed that she began caring for FC and MC about 11 years ago, due to a mutual agreement as a result of [REDACTED] having some mental health and medical issues. However, petitioner has continued to care for three of her other children (ages 8, and 10 year old twins). When questioned by this Administrative Law Judge (ALJ) as to why there was any "legal need" for the

petitioner to care for FC and MC, petitioner was unable to provide any reliable evidence or testimony, especially as [REDACTED] has been caring for three of her other children. Furthermore, there is no evidence of CPS involvement with her daughter, and her daughter does receive W-2 benefits and a residence. The petitioner was unable to refute that there was "no legal reason" as of August 2, 2013 that her daughter could not care for FC and MC pursuant to sec. 48.13 or 938.13, Wis. Stats.

There is no evidence in the record to establish that petitioner's daughter is unable to provide necessary care, food, clothing, medical care so as to seriously endanger the physical health of her children, pursuant to sec. 48.13(10 or 10m), Wis. Stats. Accordingly, on the basis of the Exhibits, and the testimony at the September 4, 2013 hearing from the petitioner and Kinship Care worker Stephanie Purpero, the Bureau correctly discontinued the petitioner's Kinship Care benefits effective August 12, 2013 because their mother could care for them.

CONCLUSIONS OF LAW

The Milwaukee Bureau of Child Welfare correctly discontinued the petitioner's Kinship Care benefits effective August 12, 2013, pursuant to sec. 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 2nd day of December, 2013

\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 December 2, 2013.

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