



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
██
██

DECISION

KIN/151388

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Department's agent, Perez-Pena Limited, in regard to Kinship Care benefits, a hearing was held on September 11, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department's agent correctly denied continuation of the petitioner's Kinship Care benefits for a child. Specifically, the issue is whether the child meets certain "at risk" criteria.

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

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. The petitioner is the maternal cousin of ██████ ██████ (AS), age eleven.

3. The mother of the child, [REDACTED] [REDACTED], resides in a one-bedroom apartment in Milwaukee, Wisconsin. She is unemployed, and has an SSI application pending. The mother has two of her other children successfully residing with her. She has no mental health issues, is not incarcerated, and has no child protective services history. The mother denies having any AODA issues, reports that she has a good relationship with AS, and visits AS regularly. She told the Kinship Care assessor that AS's placement with the petitioner is temporary, until she can get set up in a larger residence.
4. The father of the child, [REDACTED] [REDACTED], has an unknown residence. The father does not have regular contact with the child.
5. The child began residing with the petitioner in October 2012, after the great-grandparent who had been raising AS became ill. The residence with the petitioner was with the consent of the mother. The petitioner was supervising the child's medical and school status, and providing for her needs during the application period. The child successfully attends school, and does not have diagnosed emotional problems. She does not have medical problems, and has been adequately immunized. The child has not been adjudicated as a juvenile delinquent, and is not truant.
6. The petitioner was due for an annual reassessment for Kinship Care benefits by August, 2013. The home visit/assessment was performed on July 26, 2013. Based on the contract agency's report, the Bureau determined that the child did not meet any of the criteria as a child in need of protection, per Wis. Stats. §48.57(3m)(am)2. Therefore, the Department issued a denial notice for the child to the petitioner on August 9, 2013. Exhibit 1B.

DISCUSSION

I. INTRODUCTION.

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment (see, Wis. Stat. § 49.19). 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). See also, Wis. Admin. Code ch. DCF 58.

The eligibility/review criteria for a relative who is a guardian under §48.977 versus a relative who is not a §48.977 guardian are different. There is no evidence in the record that the petitioner is a §48.977 guardian.

For Kinship Care cases in which the relative is not a §48.977 guardian, all of the conditions listed in §48.57(3m)(am) must be met. The pertinent "conditions specified in par. (am)" here 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.

The petitioner's residence is more spacious than that of the mother, and is suitable for AS. The petitioner treats the child appropriately, and has created a stable environment for the child. Accordingly, the placement satisfies the "need for the child's placement" criterion described at Wis. Admin. Code §DCF 58.10(1)(a) (November, 2008). However, the agency's primary basis for discontinuance was that the child does not meet one of the criteria at Wis. Stat. §48.13.

II. THE CHILD DOES NOT FIT A CATEGORY UNDER WIS. STAT. § 48.13.

The child's situation must also satisfy the test at §48.57(3m)(am)2 – "the child meets one or more of the criteria specified in s.48.13 or 938.13." Section 938.13 refers to juvenile delinquents and truants; this child is not a juvenile delinquent or truant.

The shopping list of §48.13 criteria is as follows:

48.13 Jurisdiction over children alleged to be in need of protection or services. ...

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (3) Who has been the victim of abuse, as defined in s.48.02
- (4) Who has been the victim of abuse, as defined in s.48.02 (1)(a),(b),(c), (d), (e), or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s.48.02(1)..., including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (5) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (6) Who has been placed or care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s.252.04 and not exempted under s.252.04(3).

[numbering shown as in the statute]

Wis. Stat. 48.13.

The child did not fit into one of the criterion at §48.13 at the time of the 2013 Kinship Care reassessment. The mother has not abandoned, neglected, or abused the child in the past. Accordingly, there is insufficient evidence for me to conclude that the child has been or will be neglected for a reason other than poverty. Because the child did not fit any of the §48.13 criteria, the child was no longer eligible for Kinship Care payments pursuant to the 2013 re-application.

CONCLUSIONS OF LAW

- 1. The Department correctly determined that the child in this case did not meet any of the criteria at Wis. Stat. §48.13, during the month of reassessment (August 2013).

THEREFORE, it is

ORDERED

That the petition 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 12th day of September, 2013

\sNancy J. Gagnon
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 September 12, 2013.

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