



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/151854

PRELIMINARY RECITALS

Pursuant to a petition filed September 04, 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 hearing was held on October 01, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Perez-Pena (the agency) correctly denied Petitioner's Application for Kinship Care benefits.

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: Stephanie Purpero, Kinship Assessor, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On July 26, 2013, Petitioner applied for kinship care benefits for her two granddaughters. (Exhibit 2, pg. 4)

3. On August 30, 2013, the agency sent Petitioner a notice indicating that she was not approved for kinship care benefits. (Exhibit 1, pg. 2)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 4, 2013. (Exhibit 1, pg. 1)
5. Petitioner is the maternal grandmother of the two children in question. (Testimony of Petitioner; Exhibit 2)
6. The names and whereabouts of the children's fathers are unknown. (Exhibit 2)
7. The children's mother, [REDACTED] lives in Texas, but is homeless. (Exhibit 2; testimony of Petitioner)
8. [REDACTED] moved to Texas two years ago with an abusive partner. She was last in Wisconsin in July 2013, when she left the children with Petitioner stating that she lost her home because it had been burglarized. Petitioner is unaware of any plans that [REDACTED] has to return to Wisconsin for her children. (Testimony of Petitioner)
9. [REDACTED] last contacted the children on July 4th or 5th. (Testimony of Petitioner)
10. [REDACTED] has no known AODA issues and has not had any involvement with Child Protective Services (CPS). (Exhibit 2, Testimony of Petitioner)
11. Petitioner did not report that [REDACTED] had any mental health issues to the kinship assessor, but Petitioner is concerned because [REDACTED] is HIV positive and appears to have "given up" and doesn't call her anymore. (Testimony of Petitioner)

DISCUSSION

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 (NLR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, 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). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

In this case Petitioner does not yet have guardianship, so Petitioner is not eligible to receive Kinship under Wis. Stats. §48.57(3n).

This case turns on whether Petitioner meets eligibility criteria under Wis. Stats. §48.57(3m)(am)(1-5) which states in pertinent part:

...A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$220 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 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 interests 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, 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 or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

*§48.57(3m)(a)2(am), Wis. Stats.
Emphasis Added*

The Need for Placement and the Best Interests of the Child

The Wisconsin Administrative Code, at *§DCF 58.10(1)*, describes the “need” for placement as follows:

...The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:

- a) The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
- b) The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
- c) The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
- d) The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

It is Perez-Pena’s assertion that there is no need to place the children with Petitioner. Perez Pena bases this conclusion upon the absence of any AODA issues, CPS involvement or certain mental health issues. However, it is clear that given the mother’s homelessness and instability, the children need the kinship living arrangement to meet their need for adequate food and shelter, to develop to their potential and for safety and permanence.

Thus, per the criteria set forth above, Petitioner has established that there is a need for the children to be in Petitioner’s care and that it would be in the child’s best interests.

The risk that the children would meet the criteria under Wis. Stats. §48.13

Wis. Stat. §48.13, which provides for jurisdiction over children alleged to be in need of protection or services and states in relevant part:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) 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)(a), (b), (c), (d), (e) or (f), 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;
- (4) 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;
- (5) Who has been placed for 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).

It is the contention of Perez-Pena that the children do not meet any of the criteria enumerated above. However, there is significant risk that the children will become the subject of a CHIPS action under Wis. Stats. Sec. 43.13, specifically under subsections 2 and 8, which is concerned with whether a child will receive inadequate care because his or her parent is missing, incarcerated or hospitalized. The whereabouts and identities of the children's fathers are unknown. The mother's whereabouts are unknown except for a general idea that she is somewhere in Texas and no one knows if or when she will ever return to Milwaukee. Further, the mother has made little contact with the children since essentially abandoning them with their grandmother and may be suffering from depression, as evidenced by the fact that she no longer calls her mother, the impression that she has "given up" and her odd and incredible claim that she lost her home due to a burglary. Under such circumstances, it is found that the children are at risk of becoming the subject of a CHIPS action. Accordingly, Petitioner is eligible for Kinship Care benefits.

CONCLUSIONS OF LAW

Perez-Pena incorrectly denied Petitioner's application for Kinship Care benefits.

THEREFORE, it is

ORDERED

That the matter be remanded to the Professional Services Group/Bureau of Milwaukee Child Welfare/Department of Children and Families to take the necessary steps to issue Petitioner Kinship Care Benefits back dated to July 26, 2013, the date of application. The agency shall do this within ten days of this order.

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 6th day of November, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 6, 2013.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care