



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION

KIN/152421

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Kinship-DCF in regard to the denial of Kinship Care benefits, a telephone hearing was held on October 30, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly denied the petitioner's application for Kinship Care benefits for two minor relatives.

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:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is the paternal great uncle of "Y.H.", a girl aged 2 years, 10 months; and "M.H.", a boy aged 4 years, 11 months. He and his wife have been the primary caregivers to Y.H. and M.H. since they were delivered to him by "M.H. Sr.", the biological father, on August 1, 2013, without advance warning or discussion.

2. The biological father has never lived with the two minor children; rather, they lived with biological mother [REDACTED] [REDACTED]. On a date unknown immediately prior to August 1, 2013, [REDACTED] was incarcerated, and the biological father picked Y.H. and M.H. up and took them to his uncle's home.
3. The petitioner is that uncle, and he resides with his wife and their two teenage children, in addition to Y.H. and M.H. He formerly had M.H. Sr. live with them when he was a minor.
4. Since August 1, 2013, the petitioner has provided all food, clothing, shelter, parental guidance and medical cares to Y.H. and M.H.
5. On August 9, 2013, the petitioner filed an application with the Department for Kinship Care benefits for the needs of Y.H. and M.H.
6. On September 13, 2013, the Department, by then agent Perez-Pena, Ltd., issued a written notice to the petitioner informing him that his application for Kinship Care benefits for Y.H. and M.H. had been denied due to the lack of the need for the living arrangement and that the children do not meet the criteria for a juvenile in need of protection or services, and were not likely to do so.
7. On September 25, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of his application for Kinship Care benefits.

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. Admin. 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).

For Kinship Care cases in which the relative is not a guardian appointed under Wis. Stat., §48.977, the conditions listed in Wis. Stat., §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.

Id., (3m)(am)1, 2.

"Best interests" is defined in the Wisconsin Administrative Code as follows:

If the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child by making a reasonable effort to contact all the child's custodial parents to determine that he or she or they are aware of and have consented to the living arrangement.... If consent is received, the kinship living arrangement is determined to be in the best interests of the child. If the agency, after making reasonable efforts to contact all custodial parents, is unable to contact the custodial parents or custodial parent, the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the

child.... In addition to determining that parental consent exists, the agency shall determine that both of the following conditions exist:

- a. The applicant's or kinship care relative's parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child.
- b. A minor child residing in the applicant's or kinship care relative's home has not committed any delinquent acts or other acts that endangered the safety of another child or that could adversely affect the child for whom the kinship care payment would be made or the applicant's or kinship care relative's ability to care for the child.

Wis. Admin. Code, §DCF 58.10(2)(a)2.

The petitioner appears to be a very responsible and thoughtful citizen, someone who would be a great role model for children. Here, however, he does not establish that the living arrangement is needed or that there is any tangible risk that these children will be, or have been, abused or neglected. He asserts that biological mom has been arrested twice for what he identifies and drug related charges, but he cannot say what the charges were. He asserts she is in jail and cannot care for the children. That much seems to be the case. But he also asserts that the same biological father that lives in the City of Milwaukee with his girlfriend and swooped in and picked up the children with [REDACTED] went to jail and transported them to the petitioner's cannot and will not care for his two young children. No evidence suggests that H.M. Sr. is a criminal, child abuser or neglectful; indeed, the opposite appears from this evidence. He cared enough to come and get them and take them to a related family that had cared for him years ago.

This living arrangement is not needed. It is one of the convenience of the parents and the parties. These children are not shown to be at risk of neglect or abuse, nor that they have been neglected or abused. Absent more clear and credible evidence on these points of fact, the petitioner has not established that he is eligible for Kinship Care benefits. The agency correctly denied his application.

CONCLUSIONS OF LAW

The agency correctly denied the petitioner's application for Kinship Care benefits for the needs of his great nephew and great niece because the living arrangement is not needed; the children have not been shown to have been abused or neglected; nor shown to be at risk for neglect or abuse.

THEREFORE, it is ORDERED

That 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 4th day of November, 2013

\sKenneth D. Duren, Assistant Administrator
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 November 4, 2013.

Kinship-DCF
DCF - Kinship Care