



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/152478

PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 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 Kinship Care, a hearing was held on November 05, 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
Professional Services Group, Inc.
1126 S. 70th Street, Suite N208
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On August 12, 2013, Petitioner submitted an application for Kinship Care benefits for her grandchildren, DR and LW. Petitioner is the maternal grandmother of the children. TW is the mother. (Exhibit 2; Testimony of Petitioner)
3. On September 13, 2013, the agency sent Petitioner a notice indicating that her application was denied, because there is no need for the children to live with her and because the child is not a risk of becoming a child in need of protection and services. (Exhibit 1)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 26, 2013. (Exhibit 1)
5. The father of DR is incarcerated and the whereabouts of TW's father is unknown, as is his identity. (Testimony of Petitioner)
6. Both TW and the children previously lived with Petitioner until June 2013, when TW moved out. The children remained with Petitioner. (Testimony of Petitioner)
7. TW has had no involvement with Child Protective Services, has no drug or alcohol issues and has no physical or mental health issues. (Testimony of Petitioner)
8. TW visits with the children, and last visited two weeks before the November 5, 2013 hearing and TW celebrated LW's birthday the month before. (Testimony of Petitioner)
9. The children have remained with Petitioner, because TW is homeless and has little, if any income. (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 (NLRR) 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 it does not appear that Petitioner has legal guardianship of the children, 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.

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 the agency’s assertion that there is no need to place the children with Petitioner. However, their mother is homeless and has little income. It is unlikely that she would be able to provide a safe and stable environment for a child. Based upon all of the forgoing, it is found that the children’s need for a safe and permanent family and that their need to develop to their potential can be better met with Petitioner than with their mother. 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 children’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).

There is no evidence that the children are at risk of abuse by their mother, given the undisputed fact that their mother has had no prior involvement with child protective services, has no mental health issues, and no substance abuse issues. Further, there is insufficient evidence that the children are at risk of being abandoned by their mother, since she has frequent/regular contact with the children. While there is some risk that the children might be neglected by their mother, Wis. Stat. §48.13 requires that the risk be for a reason other than poverty. In this case, the only reason Petitioner provided for her daughter's inability to care for the children was poverty. Consequently, there is insufficient evidence that the children are at risk of becoming children in need of protection or services under Wis. Stat. §48.13, which means Petitioner is not eligible for kinship care benefits.

If circumstances change, or Petitioner receives guardianship of the children, Petitioner can always reapply for benefits.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's application for Kinship Care benefits.

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

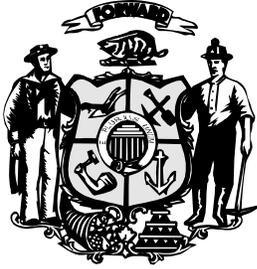
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 Milwaukee,
Wisconsin, this 25th day of November, 2013.

\sMayumi M. Ishii
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 25, 2013.

Kinship-DCF

DCF - Kinship Care