



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/152523

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 30, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group, Kinship-DCF in regard to Kinship Care, a hearing was held on November 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Professional Services Group (the agency) correctly denied Petitioner application for Kinship Care benefits for TP and IP.

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 September 6, 2013, Petitioner applied for Kinship Care benefits for TP, age 13 and IP, age 15. (Exhibit 4, pg. 1)

3. On an unspecified date, the agency sent Petitioner a letter denying her application for benefits. (Exhibit 4, pg. 1)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 30, 2013. (Exhibit 1)
5. Petitioner is the paternal grandmother of the children. She does not have guardianship of the children, but she did have physical placement of the children for twelve years and received kinship care benefit for them until February 2013, when they went to [REDACTED] to attend their brother's funeral. (Testimony of Petitioner; Exhibit 4)
6. The children's mother refused to return the children to Milwaukee, but because she neglected them the children's father, CLP, retrieved the children and brought them back to Milwaukee in May 2013. The children have resided with Petitioner since that time. (Exhibit 4; Testimony of Petitioner)
7. The children's mother is KK and her current whereabouts and contact information are unknown. (Exhibit 4)
8. CLP is married to CRP and they have a history of domestic violence. In 2011, police were called to the residence because CRP set fire to the while TP and her brother JP were there. CRP was subsequently convicted for this offense and served a sentence. (Testimony of A.T., CLP's sister; Exhibit 5)
9. In 2012, police were called because they got into a physical altercation, during which CLP bit CRP on the nose and poured hot sauce on her. The reporting officer noted seeing CCRP bleeding from the nose and seeing hot sauce on CRP and the walls of the kitchen. (Exhibit 5)
10. In July 2013, police were called because a witness reported seeing CRP intentionally hit a girl with his car, because the girl was threatening to fight IP. CRP was on scene and identified as still being married to and living with CLP. (Exhibit 5)

### 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 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.

The father of the children is still married to, has contact with and lives with CRP, a woman who set fire to a residence while children were in the residence. Police were called to a scene as recently as July 2013, because the father was reported to have intentionally run down a young woman due to a bullying situation involving IP. Based upon the foregoing, it is found that the children’s need to be free from physical or emotional injury would be better met with the Petitioner, as would the children’s need for a safe family. As such, it is found that there is a need for placement with the Petitioner.

*The risk that NLE 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).

Given that the father is still married to and has contact with CRP, a woman that set fire to a residence while the children were still in the residence, there is substantial risk that the children will become the victims of abuse under paragraph (3m), above. This risk is also present because the children are teenage girls and the father has been arrested for physically abusing his wife by biting her nose and throwing hot sauce on her.

#### **CONCLUSIONS OF LAW**

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

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the Professional Service 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 September 6, 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 December, 2013.

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\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 December 6, 2013.

Kinship-DCF  
DCF - Kinship Care