



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/152624

PRELIMINARY RECITALS

Pursuant to a petition filed October 7, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by an agent of the Wisconsin Dept. of Children and Families in regard to Kinship Care, a hearing was held on November 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department's agent correctly denied the petitioner's Kinship Care benefits for three children. Specifically, the issues are whether there is a need for the child's living arrangement to be supported by Kinship Care funding, and whether the child meets certain "at risk" criteria.

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 Care Assessor
Professional Services Group
West Allis, WI

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 paternal grandmother of ██████████ ██████████ (C.M.), age 1 ½, and ██████████ ██████████ (H.J.), age 6 months. This decision may refer to all of them as “the children.”
3. The father of the children, ██████████ ██████████, is incarcerated for an 18-month term that began in September 2013. Prior to the incarceration, Mr. ██████████ lived with ██████████ ██████████ and the children, C.M. and H.J.
4. The mother of the children, ██████████ ██████████, resides with various friends in Milwaukee County. She works part-time at a restaurant in Milwaukee County, and has a working telephone number. The mother does not have AODA issues. The petitioner asserts that the mother has bipolar disorder, and further asserts that the children were removed from the mother for a time in May 2013 for neglect (children left unattended in a car). Corroboration of that assertion is not in the hearing record, and the current placement was not requested by Child Protective Services. During the application period, the mother did not have contact with her children. She advised the petitioner that she was leaving the children in her care because she could not care for the children at this time.
5. The children began residing with the petitioner in August 2013. Their residence with the petitioner is with the consent of their mother. The petitioner was supervising the children’s medical status, and providing for their needs during the application period. The children successfully attend day care, do not have diagnosed emotional problems, do not have medical problems, and have been adequately immunized. Obviously, the children have not been adjudicated as juvenile delinquents, and are not truant.
6. Fueled by a drug addiction, the petitioner engaged in and was previously convicted of credit card fraud. She served 22 months, ending in 2008. She became sober during the incarceration, and is currently employed as a certified nursing assistant. Prior to incarceration, the petitioner’s children were removed from her care. Some of those eight living children are now adults, and two of the children are currently living with the petitioner.
7. The petitioner applied for Kinship Care benefits on September 16, 2013. The home visit/assessment was performed on September 19, 2013. Based on the contract agency’s report, the Bureau determined that there was “no need for the placement” because the agency believed that this is a temporary arrangement for the children, contingent upon the mother finding a stable residence, and because the agency questions the petitioner’s suitability as a caregiver. The Bureau also determined that the children 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’s agent issued a denial notice for the children to the petitioner on September 27, 2013. Exhibit 1.

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.

II. “NEED FOR THE PLACEMENT”

The code elaboration on the “need for the Kinship Care placement/living arrangement” is as follows:

DCF 58.10 Eligibility criteria. Before approving an application for a kinship care payment, an agency shall determine that all of the following criteria are met:

(1) NEED OF THE CHILD. (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least *one* of the following:

1. 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.
2. 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.
3. 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.
4. 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.

Wis. Admin. Code §DCF 58.10(1)(a) (November, 2008). The petitioner’s residence, per the home assessment, is physically suitable. She treats the children appropriately. The petitioner’s living arrangement is at least equivalent to that which could be provided by the children’s mother, because the mother cannot currently provide any residence for the children. Obviously, the father cannot care for the children. However, on the negative side of the ledger, the petitioner has an unsatisfactory history as caregiving relative. Thus, denial on the basis of “no need for the living arrangement” was correct, because the ability to meet the children’s needs is a tie, and the rule calls for the kinship relative’s placement to be better than that of the biological parent.

III. THE CHILDREN DO NOT FIT A CATEGORY UNDER WIS. STAT. § 48.13.

Alternatively, the children'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; these children are not juvenile delinquents or truants.

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 petitioner 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 children did not fit into one of the criterion at §48.13 at the time of the September, 2013, Kinship Care denial. Their father is admittedly unavailable for 18 months. Their mother has not abandoned or abused them in the past. There was no corroboration in this hearing record of the petitioner's assertion that the mother had neglected the children. When the assessor contacted the mother by telephone, the mother explained that she had been living with the children and their father until he was jailed. She then could not afford housing. At the time of the call, she was looking for a better-paying job, with a goal of reunification with her children. Accordingly, there is insufficient evidence for me to conclude that they have been or will be neglected *for a reason other than poverty*. It seems that the mother has placed the children with the petitioner precisely because of her poverty. Because the children did not fit any of the §48.13 criteria, the children were not eligible for Kinship Care payments pursuant to the 2013 application.

CONCLUSIONS OF LAW

1. The Department correctly determined that the children in this case did not meet any of the criteria at Wis. Stat. §48.13, at the time of the September 2013 application.

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 3rd day of December, 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 December 3, 2013.

Kinship-DCF
DCF - Kinship Care