



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/152823

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 15, 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 - PSG in regard to Kinship Care, a hearing was held on November 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Professional Services Group (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  
1125 S. 70<sup>th</sup> St., Suite N200  
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 October 3, 2013, Petitioner applied for Kinship Care benefits for MK (age 11) and JP (age 9). (Exhibit 3)

3. On October 11, 2013, the agency sent Petitioner a notice indicating that her application for benefits was denied because, “There is no need for the placement (that is, the child could reside with his or her parent(s) and the child’s needs could be adequately met)...” (Exhibit 2)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 15, 2013. (Exhibit 1)
5. Petitioner is the maternal step-grandmother of the children. (Testimony of Petitioner; Exhibit 3)
6. The identities and whereabouts of the children’s fathers are unknown. (Id.)
7. The children’s mother is LP, who is both unemployed and homeless. (Testimony of Petitioner; Exhibit 3)
8. Petitioner believes LP drinks alcohol every day to the point of intoxication, but has not, herself, witnessed daily intoxication by LP. (Testimony of Petitioner)
9. LP has no known mental health issues and has not had involvement with child protective services. (Testimony of Petitioner)
10. The children had not had any immunizations since 2007, when they would have been 5 and 3 years old. (Statement of Petitioner; Exhibit 1)

### 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.

Because the children’s mother is homeless, moving from place to place and has no employment, the children’s need for adequate food, shelter and clothing can be better met with Petitioner, as would their need to develop to develop physically, mentally and emotionally to their potential. As such, there is a need for the children’s placement with Petitioner. However, the record does not support a finding that the children are at risk of becoming children in need of protection and services under Wis. Stats. §48.13.

*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).

This case is troubling, because the BMCW Kinship Care Eligibility Report indicates that LP has another child who lives with the maternal grandmother and that the grandmother might be receiving kinship care benefits for that child. (See Exhibit 3, pg. 4) It is not clear from the record why the agency did not investigate this matter further and verify the information. However, when there is an initial application for benefits, the burden of proof falls on the applicant to show that they meet the eligibility criteria.

Looking at the record, there is insufficient evidence to support a finding that the children would be at risk of physical abuse or sexual abuse/exploitation if left in their mother's care, because there is no known/verified alcohol or other drug issues, no known involvement with child protective services and no known mental health issues.

Petitioner testified that LP had contact with the daughters at least twice before the hearing. Ms. Purpero testified that LP reported that she intends to take her children back, once she secures employment. As such, the record does not support a finding that the children are at risk of abandonment by their mother.

Petitioner expressed concerns regarding the lack of vaccinations. However, given the children's ages, it is unclear from the record whether they missed the vaccinations recommended by the Center for Disease Control. See <http://www.cdc.gov/vaccines/parents/downloads/parent-ver-sch-0-6yrs.pdf> As such, there is insufficient evidence that provision (13), above, has been met.

While there is a risk that the children will not have adequate food, shelter, clothing or medical care if they reside or stay with their mother, that risk is based solely in poverty. In order to be considered a child in need of protection or services, the risk must be caused by something other than poverty. (See subsections 10 and 10m, above) Based upon the foregoing, it is found that the children are not at risk of becoming children in need of protection and services under *Wis. Stats. §48.13*.

Because the children are not at risk of becoming children in need of protection and services under *Wis. Stats. §48.13*, Petitioner is not eligible to receive kinship care benefits for them.

### **CONCLUSIONS OF LAW**

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

**THEREFORE, it is**

**ORDERED**

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 9th 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 9, 2013.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care