



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/154069

PRELIMINARY RECITALS

Pursuant to a petition filed December 05, 2013, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Racine County Department of Human Services in regard to Kinship Care, a hearing was held on April 30, 2014, at Racine, Wisconsin. The record was held open here for a considerable length of time as the Department of Children and Families explored alternatives to the situation described below.

The issue for determination is whether Petitioner’s Kinship Care payments can continue where the children for whom the payment is made have moved out of State.

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: Brittany Sutton, Kinship Care Worker
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of North Carolina.
2. Petitioner filed this appeal to contest the discontinuance of Kinship Care benefits for her 4 grandchildren.

3. Petitioner's grandchildren were living in Racine but were removed from their parental home by child protective services. They were placed with Petitioner under an interstate compact. This was in 2012.
4. Petitioner initially received foster care payments to care for the children. She was appointed guardian for the children and began receiving long term Kinship Care benefits for the 4 children.
5. In October 2013 agency personnel became aware of a statutory provision prohibiting the payment of long term Kinship Care to children who have left the state, hence the discontinuance of Petitioner's Kinship Care.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$226 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 (NLR) Aid to Families with Dependent Children (AFDC) payment.

The statutory provision that the agency became aware of in October 2013 reads in relevant part as follows:

6. The long-term kinship care relative and the county department or department enter into a written agreement under which the long-term kinship care relative agrees to provide care and maintenance for the child and the county department or department agrees, subject to sub. (3p) (hm), to make monthly payments to the long-term kinship care relative at the rate specified in sub. (3m) (am) (intro.) until the earliest of the following:

...
f. The date on which the child moves out of the state.
Wis. Stats., 48.57(3n)6f.

Petitioner is frustrated by all that has occurred here and argues that none of it is her fault. She has lived in North Carolina for about 17 years and is grateful to have the grandchildren in her care and custody but there is still the reality of needing money to meet the needs of those children. There is a general agreement here that this might better have been pursued as a subsidized guardianship case in the initial stages of arranging the placement after the protective services removal of the children from the parental home. Petitioner maintains that the agency should have known how to structure this so as to assure economic support. Petitioner testified that the only benefit available to her in North Carolina is a 6 month, \$289.00 (total for all 4 grandchildren) Temporary Assistance for Needy Families benefit.

At the hearing the agency representative stated that if Petitioner were to simply send the children back to Wisconsin it would be considered neglect and the agency would not place the children with her in the future. Returning to Wisconsin to initiate court proceedings in an effort to correct this situation may not be feasible because of time and expense. Nonetheless, though I believe Petitioner has this information already – she may want to direct questions as to how to go back through the Racine County Court system with Racine County Human Services to Dan Chiapetta of Racine County Human Services at [REDACTED]

I must conclude that the Division of Hearings and Appeals does not have the authority to craft a remedy here nor can it ignore the statutory provisions applicable here.

CONCLUSIONS OF LAW

That, by Wisconsin State statute, Kinship Care payments cannot continue where the children for whom the payment is made have moved out of the State of Wisconsin.

THEREFORE, it is

ORDERED

That this appeal 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 3rd day of July, 2014

\sDavid D. Fleming
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 July 3, 2014.

Racine County Department of Human Services
DCF - Kinship Care
DCF - Kinship Care