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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/154509

PRELIMINARY RECITALS

Pursuant to a petition filed December 31, 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 January 22, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Kinship Care agency has met its burden to show that it correctly seeks to discontinue Kinship payments to petitioner for T.W., S.W., and C.W.

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 Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the maternal grandmother of T.W. (d.o.b. 1/15/98) and S.W. (d.o.b. 1/15/98) and C.W. (d.o.b. 1/11/01). She has and continues to receive Kinship benefits for the care of the children.
3. The children have lived with petitioner since birth.
4. On December 12, 2013 a Kinship Care reassessment interview was conducted at petitioner's home.
5. The Kinship Assessor received information regarding T.W. and S.W. from their school advising that there were numerous tardies and absences and that their grade point averages as of December 13, 2013 were 0.000 and 0.571.
6. On December 30, 2013 the Kinship Care agency issued a notice to petitioner advising her that her Kinship Care payments could not be approved based upon the determination that it was not in the best interest of the children for the children to reside with her. Exhibit 1.
7. Petitioner timely appealed that determination and her Kinship payments were ordered to be continued pending the outcome of this decision.

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. See Wis. Stat. §§48.57(3m)(am). The fundamental eligibility requirements for the Kinship Care Program are mandated by statute. Wis. Stat. §48.57(3m) states payments will be issued only if the county or other responsible agency which conducts the an assessment determines that: (1) there is a need for the living arrangement; (2) the living arrangement is in the best interest of the child; and (3) the child meets the jurisdictional criteria as a child in need of protection or services (CHIPS – Wis. Stat. §48.13). See Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6); see also, Wis. Admin. Code ch. DCF 58. In the discontinuance of an ongoing case, the Kinship Care agency has the burden of establishing that its action is correct – that it is proper to discontinue the Kinship payments because it is not in the best interest of the children for the children to reside with her.

As stated above, Kinship Care payments are made to support a “child”. At hearing, the agency’s position was that because two of the children were failing 9th grade as of the December home visit, that it was not in their best interest to continue living with petitioner. There were other extraneous issues discussed, but the school standing was what the agency used to make its decision. First, I address the school standing issue. The agency’s representative argued that the children needed to be in good standing at school in order to be eligible for the Kinship benefit. The statutory Kinship definition is as follows:

1. "Child" means a person under 18 years of age or a person 18 years of age or over, but under 19 years of age, who is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent and who is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

Id., (3m)(a). The children in question are now 16, in the 9th grade, and have grade point averages of 0.000 and 0.571; clearly this is serious and they are not in good academic standing per the school’s information as of December 2013. See Exhibit 4. However, the “good academic standing” requirement applies to the

Kinship child between the ages of 18-19. This is reiterated in the Kinship program's rules at Wis. Adm. Code §DCF 58.04(4). Thus, this good standing requirement is not a bar to these 16-year-olds.

I reiterate that the agency's notice stated that Kinship was being terminated because the living arrangement was not in the best interests of the children. In order to determine if that is the case, the agency must follow these rules:

(2) BEST INTERESTS OF THE CHILD.

(a) The proposed kinship living arrangement is in the best interests of the child. The agency shall determine that the kinship living arrangement is in the best interests of the child by proceeding as follows:

1. If the child is placed with the relative by the order of a court pursuant to jurisdiction under s. 48.13 or 938.13, Stats., by a tribal court in a matter related to a child in need of protection or services, by the action of the child welfare agency pursuant to a court order or by a child welfare agency which is the guardian of the child, the agency shall assume that the living arrangement is in the best interests of the child and shall maintain a copy of the court order or other documentation in the kinship care relative's case record.

2. If the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child by making a reasonable effort to contact all the child's custodial parents to determine that he or she or they are aware of and have consented to the living arrangement. The effort to contact the child's custodial parents shall be made by mail and the agency may supplement this effort by phone or in person. If consent is received, the kinship living arrangement is determined to be in the best interests of the child. If the agency, after making reasonable efforts to contact all custodial parents, is unable to contact the custodial parents or custodial parent, the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the child. If both parents are custodial parents, the approval of one of the parents may suffice for the agency to determine that the living arrangement is in the best interests of the child. If only one parent is a custodial parent, the approval of that parent suffices for the agency to determine that the living arrangement is in the best interests of the child. In addition to determining that parental consent exists, the agency shall determine that both of the following conditions exist:

a. The applicant's or kinship care relative's parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child.

b. A minor child residing in the applicant's or kinship care relative's home has not committed any delinquent acts or other acts that endangered the safety of another child or that could adversely affect the child for whom the kinship care payment would be made or the applicant's or kinship care relative's ability to care for the child.

(b) The agency shall maintain in the kinship care relative's case record either a copy of the court order placing the child with the kinship care relative under par. (a) 1. or a narrative summary of the determination under par. (a) 2.

Wis. Adm. Code §DCF 58.10(2).

First, the agency did not establish if the children were placed with the petitioner by an order of a court, by a tribal court, by the action of the child welfare agency or by a child welfare agency. If that is the case however, the agency must assume that the living arrangement is in the best interests of the children and must maintain a copy of the court order or other documentation in the kinship care relative's case record. Secondly, if the children were not placed by order of a court, the agency must determine if the kinship

living arrangement is in the best interests of the children by making a reasonable effort to contact all the children's custodial parents to determine that they are aware of and have consented to the living arrangement. The Assessor attempted to contact the children's parents by mail but the only mail that was delivered, to the mother, was returned. If the agency, after making reasonable efforts to contact all custodial parents, is unable to contact the custodial parent(s), the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the children. Here, the agency obviously did not find the lack of contact was indicative that the placement was in their best interest. This, despite the agency's testimony that it had access to making contact with the mother because of a Bureau of Milwaukee Child Welfare's worker's statement about where the mother was now living. Thirdly, in addition to determining that parental consent exists, the agency must determine that both of the following conditions exist: 1) the petitioner's parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child and 2) a minor child residing in the applicant's or kinship care relative's home has not committed any delinquent acts or other acts that endangered the safety of another child or that could adversely affect the child for whom the kinship care payment would be made or the applicant's or kinship care relative's ability to care for the child. As to the latter, no evidence was presented. As to the former, the agency offered up some information about a medical neglect issue with one of the children, but ultimately decided that the matter was resolved without a substantiation of neglect. The petitioner also testified that T.W. and S.W. are on IEPs, that she has counseled them on the importance of school attendance and grades, and that this is not the first time that at least one of the girls was failing school. The agency did not seem aware that there have been struggles in school prior to this time. As such, I find that the agency has not established that the placement is not in the best interests of the children. The decision to terminate appears premature, if necessary at all, in that the agency relies on the Bureau of Milwaukee Child Welfare's worker's statements about the ability of the mother to care for these children without having done the determination for same for Kinship.

Finally, I do not find that the agency has met its burden to show that *C.W.*'s Kinship should be terminated as no evidence was presented regarding *his* situation.

Based on the foregoing, I must find that the Kinship Care agency has not met its burden to show that it correctly seeks to discontinue Kinship payments to petitioner for T.W., S.W., and C.W.

CONCLUSIONS OF LAW

1. The Kinship Care agency has not met its burden to show that it correctly seeks to discontinue Kinship payments to petitioner for T.W., S.W., and C.W.

THEREFORE, it is

ORDERED

That the matter is remanded to PSG with instructions to: rescind and reverse the termination of the petitioner's Kinship Care benefit for T.W., S.W., and C.W., and to continue Kinship payments for T.W., S.W., and C.W. These actions are to be completed within 10 days of this decision.

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 12th day of February, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 12, 2014.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care