



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]

DECISION

KIN/155755

PRELIMINARY RECITALS

Pursuant to a petition filed February 27, 2014, 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 May 08, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Professional Services Group (PSG) correctly terminated the Petitioner’s Kinship Care payments.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted] |

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Danielle Green, Kinship Assessor, Kinship Care Worker
Professional Services
1126 South 70th Street, 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 February 21, 2014, Professional Services Group (PSG) erroneously sent the Petitioner a notice that her application for Kinship Care benefits had been denied. (Exhibit 1)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 27, 2014. (Exhibit 1)
4. On March 3, 2014, PSG sent the Petitioner the correct notice, advising her that her Kinship Care payments would be terminated. (Exhibit 2)
5. Petitioner is the maternal grandmother of the two children in question. (Testimony of Petitioner; Exhibit 3)
6. The children's mother and the children had moved to Indianapolis to live with a maternal uncle, because the mother wanted to get out of an abusive relationship with the children's father. (Testimony of Petitioner)
7. Petitioner was initially approved for Kinship Care benefits in November 2013, because the maternal uncle was physically abusive towards their mother and ultimately resulted in police involvement. After the last altercation the children were brought to Milwaukee to live with the Petitioner, because their mother became homeless. (Exhibit 3; testimony of Petitioner)
8. The children's father is an alcoholic, is constantly in and out of prison and has a history of abusing their mother. (Testimony of Petitioner; Exhibit 3)
9. PSG conducted a reassessment on February 18, 2014, at which time the children's mother was visiting to help the Petitioner recover from surgery. (Testimony of Petitioner; Exhibit 3)
10. At the February 2014 meeting, the children's mother reported that since November 2013, she had moved to New Jersey and had a new boyfriend, who was employed. The children's mother further stated that she wasn't sure how long she would be in Milwaukee helping the Petitioner's recovery. (Testimony of Petitioner; Testimony of Danielle Green – Kinship Assessor)
11. The children's mother testified that she had previously been diagnosed with depression, but was not currently taking the medication that had been prescribed to her. (Testimony of Ms. Green)

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 (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*

In the case at hand, PSG bears the burden to prove that they correctly terminated the Petitioner's Kinship Care benefits.

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.

Petitioner was initially approved for Kinship Care benefits in November 2013, because the maternal uncle was physically abusive towards the children's mother and this abuse ultimately resulted in police involvement. After the last altercation the children were brought to Milwaukee to live with the Petitioner, because their mother became homeless. (Exhibit 3; testimony of Petitioner) Further, the children's father is an alcoholic, is constantly in and out of prison and has a history of abusing their mother. (Testimony of Petitioner; Exhibit 3)

PSG presented no evidence to support a finding that the children's mother had changed her situation since November 2013, such that she could now provide her children with any of the needs listed above.

At the hearing Ms. Green testified that PSG determined that PSG concluded that there was no barrier, other than poverty, to the children's mother caring for her children, because she was in Milwaukee for an indeterminate amount of time, when the assessor conducted her home visit in February 2014. This makes little sense, given that the children's mother stated that she had moved from Indiana to New Jersey within the last four months and was in Milwaukee temporarily.

According to Ms. Green's testimony, PSG considered the children's mother to be residing in Milwaukee, despite her testimony to the contrary, because the children's mother did not state a date certain when she

would be leaving. This is not reasonable, given that the mother reported that she was residing in New Jersey, had a job waiting for her and had a new boyfriend who also had employment. PSG's conclusion was also unreasonable given Ms. Green's testimony that there were no follow-up questions concerning where in New Jersey the children's mother was living, with whom she was living, whether the new boyfriend had a criminal background nor how the mother secured housing. As will be discussed further, these follow-up questions were critical, given the mother's history of mental illness and abusive relationships.

Based upon the foregoing, it is found that PSG did not meet its burden to prove that there was no longer a need for placement with the Petitioner.

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).

As discussed above, Ms. Green testified that PSG determined that the children no longer met the criteria for approval because it concluded that the children's mother was residing in Milwaukee and because it concluded that there was no barrier, other than poverty, to her caring for her children. This makes little sense, given that the children's mother stated that she had moved from Indiana to New Jersey within the last four months and was in Milwaukee temporarily.

When asked whether PSG was concerned about the situation in New Jersey, Ms. Green testified that the agency had no concern about the children being abused or neglected because their mother's boyfriend had stable employment. Quite frankly, this makes absolutely no sense because the new boyfriend has no legal obligation to care for either the children or their mother.

Further, given that the mother reported that she had been diagnosed with depression, had not been taking medication, had a history of being in abusive relationships and then less than four months after getting out of an abusive situation with her brother, was in a new dating relationship, raises serious questions about the mental stability of the children's mother and her ability to exercise good judgment concerning the children's well-being as well as her own.

According to Petitioner's credible testimony, which the agency did not refute with any evidence, the children's mother is living with the new boyfriend. It would be irresponsible to send the children to live with a man that their mother had only recently met, once again, because of the mother's history of mental illness, medication non-compliance and history of abusive relationships. Based upon the foregoing, one can only conclude that the children would be at significant risk of abuse or neglect, if sent to live with their mother.

CONCLUSIONS OF LAW

PSG incorrectly terminated the Petitioner's Kinship Care benefits.

THEREFORE, it is

ORDERED

PSG shall reinstate the Petitioner's kinship care benefits effective February 2014. PSG shall take all administrative steps necessary to complete this task within ten 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 15th day of July, 2014.

\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 July 15, 2014.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care