



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ██████████
██
██

DECISION

KIN/155960

PRELIMINARY RECITALS

Pursuant to a petition filed March 6, 2014, under Wis. Stat., §48.57(3m)(f), to review a decision by the Professional Services Group (PSG) to discontinue Kinship Care, a hearing was held on April 2, 2014, by telephone.

The issue for determination is whether there is a need for placement of petitioner's grandchildren.

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
██
██

Respondent:

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

By: Michael DeVine
PSG, Inc.
1126 S. 70th St., Suite N200
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner has been receiving Kinship Care for three grandchildren ages 9 to 13, all of whom are the children of petitioner's daughter ██████████. The Kinship agency did an annual reassessment in February, 2014.
3. During the assessment petitioner reported that ██████████ lived in ██████████ with a roommate. ██████████ has a part-time job at ██████████. ██████████ has phone contact with the children. However, when the assessor tried to contact ██████████ her phone was disconnected, and it remains disconnected. As of the date of

the hearing the phone still was disconnected, and [REDACTED] has had no contact with the children for approximately one month. That contact resulted from petitioner taking the children to [REDACTED], not from [REDACTED] making the effort to have the contact.

4. Petitioner reported that she was unaware of any drug or alcohol use by [REDACTED] although the residence is in a “drug-infested” area of [REDACTED]. [REDACTED] has no history of Child Protective Services involvement, but the children have lived with petitioner almost their entire lives.
5. The children’s fathers have no contact with them.
6. Benefits were continued pending this decision.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$215 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. 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).

For Kinship Care cases in which the relative is not a guardian appointed under Wis. Stat., §48.977, the conditions listed in Wis. Stat., §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.

Id., (3m)(am)1, 2. In Decision No. KIN-40/51985, dated May 22, 2002, the Department’s deputy secretary concluded that even if there was an apparent need for the placement, there still must be evidence that there is a risk to the child cited in Wis. Stat., §48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in Wis. Stat., §48.57(3m)(am), that there be a need for the placement and that the child be at risk of harm that could lead to a CHIPS case.

The primary criteria under §§48.13 and 938.13 at issue in Kinship Care cases are that the child needs protection because he has no parent or his parents have abandoned him, he has been a victim of abuse or is at risk of abuse, or the parents refuse to or are unable to provide necessary care, food, clothing, or shelter for reasons other than poverty. Other criteria under those sections are that the child has not been immunized, the parent is not seeking medical care for the child, the child is habitually truant while in the parent’s custody, or the child has committed a specified delinquent act while in the parent’s custody.

If this were a new application petitioner would have the burden of proving the need for placement of the children, and based on the evidence I likely would find that she had not met the burden. However, this is a discontinuance, meaning that the agency previously found a need for the placement due to some incapacity of the mother. In a discontinuance the agency has the burden of proving that circumstances have changed, and for that reason I am reversing the agency action in this case.

The only evidence supporting no need for the placement is that [REDACTED] has a residence, is employed, and has regular contact with the children. As it turns out the contact is not as frequent as related to the assessor, and it appears that [REDACTED]'s living situation is not as stable as related to the assessor. In addition, petitioner reported to the assessor that [REDACTED] hoped to take the children in the future, but at the hearing she testified that changing custody was unlikely to ever happen because [REDACTED] was so unstable and uninterested.

Again, if this were a new application I likely would say that petitioner is simply promoting her daughter's unstable lifestyle by caring for her children. However, since it is a discontinuance the agency must show that the instability previously supporting the need for placement has been remedied, and I cannot make that finding here. The assessor's inability to contact the mother is a glaring red flag that makes me question whether [REDACTED] is as stable as reported.

CONCLUSIONS OF LAW

The agency has not proven that there no longer is a need for the placement of petitioner's grandchildren and that the Kinship Care benefit paid to petitioner should be discontinued.

THEREFORE, it is ORDERED

That the matter be remanded to the agency with instructions to continue petitioner's Kinship Care eligibility based upon the need for the placement of her grandchildren.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of April, 2014

\sBrian C. Schneider
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 April 7, 2014.

Professional Services Group - PSG
DCF - Kinship Care
DCF - Kinship Care