



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/158048

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 31, 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 July 15, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Kinship Care because it could not verify the need for placement or whether placement was in the children's best interests.

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:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner's daughter, SB, and TL are the parents of EB. EB resides with petitioner.
3. EB's residence with petitioner is a voluntary living arrangement; there has been no Child Protective Services (CPS) involvement with EB.

4. SB does not have mental health issues, but is financially unstable.

### DISCUSSION

The Kinship Care benefit is a monthly public assistance payment, 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. Wis. Adm. Code, §§DHS 201.17; 201.31. 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.

The respondent discontinued Kinship Care in this case because it determined that there was no need for the child to be placed with petitioner as the child’s mother could care for her. The petitioner argued that she has no idea where EB’s mother resides now. She testified that she feels that SB has abandoned EB.

I commend the petitioner for voluntarily assuming care of her grandson. However, I find no error on the part of the agency in denying Kinship Care benefits here. Petitioner did not establish that SB cannot care for EB, and I note that there is no known involvement with Child Protective Services with either SB or EB. Petitioner noted that SB drinks, but when asked about this further, she conceded that she does not know if she abuses alcohol. Based upon the record before me, I am unable to conclude that petitioner has met the eligibility criteria for Kinship benefits.

### CONCLUSIONS OF LAW

The agency correctly denied petitioner’s Kinship Care application because it was not able to ascertain the need for placement or whether placement with petitioner was in the child’s best interests.

**NOW, THEREFORE, it is ORDERED**

That the petition for review herein be and the same is hereby dismissed.

### **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 17th day of October, 2014.

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\sPeter McCombs  
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 October 17, 2014.

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