



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION  
KIN/159364

**PRELIMINARY RECITALS**

Pursuant to a petition filed July 26, 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 August 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the county agency correctly discontinued the petitioner’s Kinship Care benefits effective August 2, 2014, due to no longer any “legal need.”

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: Mary Gleason, Kinship Care Worker  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. The petitioner is the paternal great grandmother of her great grandson, JM. JM has been receiving care from the petitioner for about the past 9 years, based upon a voluntary arrangement with her son, [REDACTED] [REDACTED] and the mother of JM, [REDACTED] [REDACTED], by mutual agreement.

3. On July 8, 2014, petitioner's Kinship Care (KC) case was assigned to Kinship Care assessor, Mary Gleason, for a reassessment of her Kinship Care eligibility for her care of JM.
4. The mother of JM is [REDACTED].
5. [REDACTED] is employed part-time as a home health aide. [REDACTED] provides care for her two other children, and is capable of caring for JM as well. She has a stable residence in Milwaukee, WI.
6. The father of JM is [REDACTED] who resides in Milwaukee, WI. He is usually unemployed, and is at times is homeless. He has been in and out of prison. He has ongoing AODA issues and is not capable of caring for JM.
7. The county agency assessed the petitioner's Kinship Care ongoing eligibility on July 10, 2014. That July 10, 2014 home assessment of the petitioner's eligibility for Kinship Care benefits was conducted at petitioner's home with petitioner (with later telephone interview with [REDACTED]) by Ms. Mary Gleason of Professional Services Group (PSG). Based upon that assessment, [REDACTED] does not have any drug/alcohol problems. There have at times in the past been period of instability in her residence, but there is no evidence that those issues prevent her from caring for her two other children. There is no evidence of any abuse or neglect of JM when she has been caring for him.
8. The Bureau sent a July 23, 2014 notice to the petitioner stating that her Kinship Care benefits would discontinue effective August 2, 2014, because there was no evidence of a legal need for continued Kinship Care benefits for JM when he could reside with and be cared for by his mother, [REDACTED].

### 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. 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). The Petitioner apparently fits the definition of a "Kinship Care relative," which is stated at Wis. Stats., § 48.57(3m) (a).

The eligibility requirements for the Kinship Care Program are mandated by statute:

(am) From the appropriations under s. 20.435 (7) (b) and (o), the department shall reimburse counties for payments made under this subsection. A county department shall make payments in the amount of \$215 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 for payments under this subsection and the county 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 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.

(Emphasis added) Wis. Stats. § 48.57.

In this case, the petitioner agreed that she began caring for JM 9 years ago, due to a mutual agreement as a result of [REDACTED] moving frequently and being homeless at times. However, petitioner has continued to care for two of her other children. When questioned by this Administrative Law Judge (ALJ) as to why there was any "legal need" for the petitioner to care for JM, petitioner was unable to provide any reliable evidence or testimony, especially as [REDACTED] has been caring for two of her other children, has part-time employment and a stable residence. Furthermore, there is no evidence of CPS involvement with [REDACTED]. The petitioner was unable to refute that there was "no legal reason" as of August 2, 2014 that [REDACTED] could not care for JM pursuant to sec. 48.13 or 938.13, Wis. Stats.

There is no reliable evidence in the record to establish that [REDACTED] is unable to provide necessary care, food, clothing, medical care so as to seriously endanger the physical health of her children, pursuant to sec. 48.13(10 or 10m), Wis. Stats. Accordingly, on the basis of the Exhibits, and the testimony at the August 27, 2014 hearing from the petitioner and Kinship Care worker [REDACTED] [REDACTED], the Bureau correctly discontinued the petitioner's Kinship Care benefits effective August 2, 2014 because his mother could care for him.

### CONCLUSIONS OF LAW

The Milwaukee Bureau of Child Welfare correctly discontinued the petitioner's Kinship Care benefits effective August 2, 2014, pursuant to sec. 48.57(3m) (am)1, Wis. Stats.

**THEREFORE, it is**

**ORDERED**

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 24th day of November, 2014

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\sGary M. Wolkstein  
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 November 24, 2014.

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