



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

KIN/159757

PRELIMINARY RECITALS

Pursuant to a petition filed August 9, 2014, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Department of Children and Families, by the Professional Services Group – PSG, in regards to the discontinuance of Kinship Care, a telephone hearing was held on August 27, 2014, at Milwaukee, Wisconsin. At the request of the agency, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the Department, by its agents, has correctly discontinued the petitioner’s Kinship Care Benefits for the needs of A.T. and T.T.

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: Nina Moralez, Kinship Care Worker – PSG
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She has been the caregiver for two paternal nieces who are siblings, “A.T.”, (16 years old) and “T.T.”, (14 years old), since at least 2007. In at least the past year she has been receiving Kinship Care benefits for the care needs of A.T. and T.T. She provides all food, clothing, shelter, education guidance, and medical cares that these two children receive when they receive it.

2. The biological mother, [REDACTED] [REDACTED], resides in Milwaukee. She is reported to be a crack cocaine addict, with a history of Alcohol and Other Drug Abuse, and a reported criminal history related to prostitution and unspecified other activities to support her drug habit. She has been reported in the course of the investigation by family members to have AIDs and not be getting proper medical treatment for the condition.
3. The biological father, Troy, T., reportedly lives in La Crosse, WI; is reported to be an alcoholic; and is reported to have sporadic phone contact with A.T. and T.T.
4. A.T. was reported to be living with her biological mother by choice since about May 19, 2014. The petitioner says A.T. stays with her mother on weekends and with the caregiver on weekdays. It is unclear which living arrangement is actually extant on this record.
5. A third sibling, daughter "Ti.T." lives with her grandmother, having left by caregiver request in December, 2013, due to the child's report of a sexual assault upon her at the caregiver's home, and she had been removed from the caregiver's home legally by court order in May, 2014. These events were the direct consequence of a substantiated finding of sexual abuse by the caregiver's teenage son (15 years old) of Ti.T., who also resided in the home at the time; he continues to do so with T.T. living in the home at present.
6. The petitioner has had at least seven Child Protection & Services allegations filed against her or household members she controls since December, 2013, that range from child neglect, to emotional abuse, physical abuse and sexual abuse. Of these seven, it is clear that sexual abuse by the teenage son of Ti.T. was substantiated as a matter of record while Ti.T. was living in the caregiver's home.
7. On August 5, 2014, the Department's agent, Professional Service Group, Inc., issued a Notice of Non-Approval of Kinship Care Payment for A.T. and T.T., stating as "OTHER" grounds as follows:

Currently there is a pending neglect report against Ms. [REDACTED] regarding [A.T.]. Ms. [REDACTED] said she has not seen [A.T.] since [sic.] 5/19/14. A report was filed at that same time stating [A.T.] was kicked out of the home and not allowed back in. [Ti.T.], another sister living in the home, was moved out of the home in December, 2013 at the request of the caregiver. There is only [T.T.] currently living in the home. It is also reported that the caregiver's 5 year old son, came to school with a gun strapped to his leg. He said he got the gun from his home.

See, Exhibit #3, attached letter.

8. On August 9, 2014, the petitioner filed an appeal contesting the discontinuance of Kinship Care benefits for A.T. and T.T.

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.

This is a discontinuance case, meaning that the agency previously found a need for the placement due to some incapacity of the mother and/or father. In a discontinuance, the agency has the burden of proving that circumstances have changed.

Those changed circumstances are here by the bushel. The testimony is clear that at least seven child neglect and/or abuse allegations have been compiled against household member in the last 9 months. One child was moved due to alleged, and later substantiated, sexual abuse by a household teen under the caregiver's control, her son. A second, the oldest sibling, has appeared to vote with her feet, as the evidence indicates that she is not living in the caregiver's home at all. In fact, she was locked out of the home at least once in May, 2014, for staying out to late. 2:30 A.M. is no time for a caregiver to decide to lock a 15 year-old girl out of the house. The third niece sibling remains in the same home with the perpetrator of the sexual contact with Ti.T. that was substantiated. The fact that no criminal conviction does not persuade me that the Department and the taxpayers have any duty to subsidize this deleterious living arrangement. Placement of A.T. and T.T. with the caregiver is not in their best interests. Kinship Care benefits were correctly denied. In fact, the continued presence of any of these Kinship Care children in this home is ill-advised and not in their best interests; and they are at risk of neglect or abuse. The petitioner would be well-advised to find a new living arrangement for A.T. and T.T. before permanent harm results to the nieces or her own biological children. The agency action is sustained.

CONCLUSIONS OF LAW

That the Department, by its agents, has correctly discontinued Kinship Care benefits to the petitioner for A.T. and T.T.

THEREFORE, it is

ORDERED

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

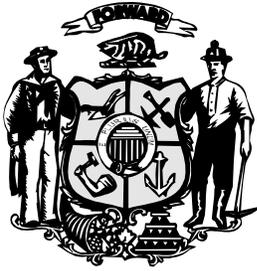
APPEAL TO COURT

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 3rd day of September, 2014

\sKenneth D. Duren, Assistant Administrator
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 September 3, 2014.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care