



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
████████████████████
██████████

DECISION

KIN/161168

PRELIMINARY RECITALS

Pursuant to a petition filed October 08, 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 October 30, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly denied the petitioner's application for Kinship Care benefits for her minor granddaughter, A.F.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
████████████████████
██████████

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:

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 her minor granddaughter, A.F., since approximately June 4, 2014, by agreement with birth mother ██████████ ██████████ for voluntary placement because ██████████ is unemployed.
2. Since June 4, 2014, the petitioner has provided all food, clothing, shelter, cares, parental guidance, and medical/dental cares to A.F.

3. On July 28, 2014, the petitioner filed an application with the Department requesting Kinship Care Benefits for A.F. to subsidize the costs of [REDACTED] caring for A.F.
4. On August 7, 2014, the Kinship Care program sent an assessor to the petitioner's home to assess the need for the placement of A.F. with the petitioner. At that time, the petitioner admitted to the assessor that [REDACTED] lived in the Milwaukee area; did not have any known alcohol or other drug abuse issues; did not have any past or present involvement with Child Protection and Services agencies in any way; and rather [REDACTED] was unemployed and wanted A.F. to live with the petitioner because she could not herself financially afford to care for her own child.
5. On September 5, 2014, the Department, by the Kinship Care Program, issued a letter of denial to the petitioner informing her that there evidenced need for the living arrangement, and that the child had not been shown to be abused or neglected or at risk of either condition.
6. On October 8, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of her application for Kinship Care Benefits.

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 her parents have abandoned her, she 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.

This placement completely fails to meet any of these criteria. The child is with her grandmother solely by voluntary agreement with her mother. The mother is available, and does not present with any parenting concerns other than present financial distress. The mother lives on 23rd Street in Milwaukee, a few miles from where the petitioner lives with the child on Lovers Lane. There is no need for this placement. Rather, the family has chosen the current arrangement. In addition, there is no evidence that the child has been abused or neglected by her mother, or that she is at risk of either.

The agency fully and correctly denied the instant application.

CONCLUSIONS OF LAW

That the Department, by its agents, correctly denied the petitioner's July 28, 2014, application for Kinship Care benefits for the needs of A.F.; there is no need for the living arrangement and the child has not been abused or neglected, nor at risk of either.

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 31st day of October, 2014

\sKenneth D. Duren, Assistant Administrator
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 31, 2014.

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