



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

KIN/162851

PRELIMINARY RECITALS

Pursuant to a petition filed December 23, 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 January 20, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly denied Kinship Care benefits for minors in the petitioner's care.

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: Ricki Fields, 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. She is the maternal grandmother of two minor grandsons, "LS" (age 3); and "TS" (age 1). LS and TS have primarily resided with her since approximately November, 2014. This is a voluntary placement situation.

2. OEM, the mother of LS and TS does not have a criminal record or any alcohol or drug abuse problems. See, Exhibit #2. OEM has no criminal history or medical issues.
3. LSS, the father of LS and TS does not have a criminal record or any alcohol or drug abuse problems. See, Exhibit #2. LSS has no criminal history or medical issues.
4. OEM and LSS individually visit the caregiver's home weekly (OEM 2+ times per week; LSS 1-2 times per week) and visits with her children.
5. On December 18, 2014, the respondent issued a denial letter to the petitioner informing her that Kinship Care benefits for TS and LS were denied because the children do not meet any of the criteria to be considered a child or juvenile in need of protection or services, or likely to meet such criteria in the future. See, Exhibit #2.
6. On December 23, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of Kinship Care benefits for LS and TS.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$226 (2014) per month per child paid to a qualified relative who bears no legal responsibility to support the child. 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 § 48.57(3m)(am) must be met. The pertinent “conditions specified in par. (am)” 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.

(Emphasis added) *Id.*, (3m)(am)1, 2.

The Department of Children and Families has set forth a policy pertinent to these standards as follows:

As the relative who receives the Kinship Care payment has no legal obligation to support the children for whom she is caring, the Kinship Care statute mandates there be an established need for the relative to provide care for the children. In addition to being in the best interests of the child, the agency must determine that the child would be at risk of abuse or neglect if returned to his or her natural parent.

DHS Policy Memo, *Vol. 2 of the Kinship Care Questions and Answers*, p.23, question 9, issued January 5, 1998. The abuse and neglect statutory sections referenced above – Wis. Stat. § 48.13 and Wis. Stat. § 938.13, both concern children in need of protection or services. To meet that standard, a child must be the victim of abuse or at substantial risk of becoming a victim of abuse. Or a child's parent must refuse, neglect, or be unable (for reasons other than poverty) to provide necessary care, food, clothing, medical or dental care so as to seriously endanger the physical health of the child. Wis. Stat. § 48.13(3),(3m),(10).

In addition, Wis. Adm. Code, § DHS 58.10(1) describes the “need” for placement as follows:

- (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:
1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
 2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
 3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
 4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

Even when the assessor finds that one of the four grounds cited above are met, 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) (i.e., "need" and "best interests") *and* that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHPS) case.

Based on the testimony and documentation submitted, the preponderance of the evidence causes me to conclude several things. The need for the living arrangement is established under the four prong test for "need", because petitioner provides a better, and more stable, home for the four children than their mother or father could. In addition, it is apparent that the placement is the most beneficial in terms of stability, care, and long-term parental guidance, i.e., in their best interests.

However, this fact pattern does not present enough to justify the continuation of Kinship Care benefits for the children. Neither OEM or LSS has known criminal or CPS issues, and neither receives any treatment for any putative mental health concerns. I can only conclude on this record that there is no evidence that supports any conclusion that OEM or LSS would place any of these children at significant risk of neglect for food, clothing, shelter or medical/dental cares. Rather, both natural parents has regular contact and take an interest in the status of their children.

Therefore, I must ultimately conclude that the respondent correctly denied petitioner's benefits for TS and LS because these children do not meet any of the criteria to be considered a child or juvenile in need of protection or services; nor are they likely to meet such criteria in the future. Failing this last part of the eligibility test, even while passing the need and best interest thresholds, means petitioner is ineligible for Kinship Care benefits.

CONCLUSIONS OF LAW

That the Department correctly discontinued petitioner's Kinship Care benefits for TS and LS.

NOW, 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 27th day of February, 2015.

\sPeter McCombs
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 February 27, 2015.

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