



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/163977

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 2015, under Wis. Stat., §48.57(3m)(f), to review a decision by Professional Services Group to deny Kinship Care, a hearing was held on March 5, 2015, by telephone.

The issue for determination is whether there is a need for the placement of petitioner's grandchildren.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Stephanie Purpero
PSG, Inc.
1126 S. 70th St., Suite 112-3
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner applied for Kinship Care on January 11, 2015 for her two maternal grandsons, ages 5 and 1. An assessment visit was done on January 19, 2015.
3. When the assessor visited petitioner's home, the boys' mother was present. It was reported in the interview that the parents were living together in a three-bedroom trailer home. The father was employed and the mother was unemployed but seeking employment. Both parents had regular contact with the children. There was no criminal history, AODA history, or protective service

history with the parents. The stated reason for the placement with petitioner was due to finances and lack of sufficient housing.

4. By a notice dated February 10, 2015 the Kinship Care agency denied the request with a finding that there was no need for the placement.
5. Prior to the hearing petitioner provided a series of photographs of the parents' home. The home was a mess with broken windows and fixtures, empty alcohol and other containers strewn haphazardly, and a bathroom fit to be condemned. The home was unsanitary and even dangerous for children. Petitioner reported that the parents have a history of living in that manner. She also reported that when she removed the children in late 2104 the 1-year-old child was unable even to crawl because he never was taken out of his crib; he required therapy to catch him up on potential ambulation. Petitioner testified that she did not make this report at the assessment because her daughter was present and she did not understand the criteria for Kinship Care eligibility.

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 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.

Based on what the Kinship Care assessor was told in the home visit, the decision to deny Kinship Care absolutely was correct. There was nothing in the assessment that would lead to a determination that the children needed to be placed outside of their parents' home. The evidence presented at the hearing cast the situation in a whole different light. Leaving the children in that pig sty would have been neglectful by

the grandparent, and she clearly did the right thing. I have no problem finding that there is a need for the placement due to reasons other than poverty (the fact that the father was employed and still lived like that tells me that there is more to the situation than mere lack of funds). Furthermore the placement is in the children's best interests.

As I said, technically the agency's denial was correct. However, to uphold the denial would require petitioner to file a new application and go through the entire process again. Therefore, to avoid wasting much time and effort, I will order the Kinship Care agency to grant eligibility, but only as of March 1, 2015, due to petitioner's untimely reporting of the actual situation in the parents' home.

CONCLUSIONS OF LAW

Based upon the evidence presented at the hearing there is a need for the placement of petitioner's grandsons with her and the placement is in their best interests.

THEREFORE, it is ORDERED

That the matter be remanded to the agency with instructions to grant petitioner Kinship Care eligibility for her two grandsons effective March 1, 2015. The agency shall do so within 10 days of this decision.

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 9th day of March, 2015

\sBrian C. Schneider
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 March 9, 2015.

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