



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/164087

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Kinship-DCF in regard to Kinship Care, a hearing was held on March 19, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's kinship payments when the petitioner chose not to participate in the foster care licensing process.

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: Julie Bishoff, Kinship Care Worker
Kinship-DCF
Bureau of Milwaukee Child Welfare
635 N 26th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Waukesha County.
2. The petitioner has minor relatives placed in her home. The petitioner was receiving kinship funding for these minor relative.

3. On January 8, 2015 the petitioner informed a foster care licensing specialist that she wished to withdraw her application for foster care licensing. The petitioner was informed on several occasions that this would result in the discontinuance of kinship payments, and the petitioner still chose not to participate in the foster care license process.
4. On January 14, 2015 the agency sent the petitioner a letter stating that they were discontinuing the petitioner's kinship benefits because the petitioner had refused or was uncooperative with the licensing process.
5. On February 20, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

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, §§HSS 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).

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.
3. The county department or department conducts a background investigation under sub. (3p) of the kinship care relative [].
4. Subject to sub. (3p) (fm) 1. and 2., the kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child and that no adult resident, as defined in sub. (3p) (a),
5. The kinship care relative cooperates with the county department or department in the application process [].
- 5m. The kinship care relative is not receiving payments under sub. (3n) with respect to the child.
6. The child for whom the kinship care relative is providing care and maintenance is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

Id., (3m)(am)1 - 6.

"Best interests" is defined in the Wisconsin Administrative Code as follows:

If the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child by making a reasonable effort to contact all the child's custodial parents to determine that he or she or they are aware of and have consented to the living arrangement.... If consent is received, the kinship living

arrangement is determined to be in the best interests of the child. If the agency, after making reasonable efforts to contact all custodial parents, is unable to contact the custodial parents or custodial parent, the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the child.... In addition to determining that parental consent exists, the agency shall determine that both of the following conditions exist:

- a. The applicant's or kinship care relative's parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child.
- b. A minor child residing in the applicant's or kinship care relative's home has not committed any delinquent acts or other acts that endangered the safety of another child or that could adversely affect the child for whom the kinship care payment would be made or the applicant's or kinship care relative's ability to care for the child.

The purpose of foster home licensing is to ensure the health and welfare of children. Wis. Adm. Code, §§DCS 56.05. The foster care licensing process requires people in the home meet several personal requirements and pass a background check. Wis. Adm. Code, §§DCS 56.05. The home must also be safe, there must be proper sleeping arrangements for the child, the home must be properly maintained, there must be a telephone, there has to be heat, and generally the home must be a safe environment for a child. Wis. Adm. Code, §§DCS 56.07. These licensing requirements are very similar to factors that an agency considers when determining what is in the best interest of the child.

In this case the petitioner has refused to cooperate with the foster care licensing process. This process involves a background check of people in the home. These requirements are designed to protect the best interests of the child. Even if there is an issue where a kinship relative would not be a proper foster home, the kinship child may remain in the home with kinship funding if that placement is in the best interest of the child. At this point the agency is unable to determine whether the petitioner's home is in the kinship child's best interest because the petitioner refuses to open her home and the people in her home to the foster care licensing requirements.

This case is unfortunate on a number of levels. The petitioner states that she does not wish to cooperate with the foster care licensing process because she had a high risk pregnancy. The baby has since been born and died shortly after birth. In dealing with those issues, the petitioner did not believe that she had the time and energy to devote to the foster care licensing process. The petitioner further states that in the past there was an issue with the number of bathrooms for the number of people in the home. If the factors show that this is the best home for the kinship children, it could be possible for the agency to waive that requirement. I'm very sorry for the petitioner's loss of her baby. Although this situation is a very difficult situation for the petitioner, based upon the record before me, I must conclude that the agency properly discontinued the petitioner's kinship funding when the petitioner refused to cooperate with foster care licensing.

CONCLUSIONS OF LAW

The agency properly discontinued kinship funding when the petitioner refused to cooperate with the foster care licensing requirements.

THEREFORE, it is

ORDERED

That the petition 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 Milwaukee,
Wisconsin, this 31st day of March, 2015

\sCorinne Balter
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 31, 2015.

Kinship-DCF

DCF - Kinship Care