



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

KIN/164825

PRELIMINARY RECITALS

Pursuant to a petition filed March 18, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Jefferson County Department of Human Services in regard to Kinship Care, a hearing was held on June 2, 2015, at Jefferson, Wisconsin.

The issues for determination are (1) whether the agency correctly denied the petitioner's Kinship Care application due to parental objection, and (2) whether the petitioner's hearing request was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Redact, CSW, MSW
Child & Family Division Manager
Jefferson County Department of Human Services
Workforce Development Center
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Jefferson County.

2. The petitioner is the aunt of minor child G.C.. The child's mother voluntarily left the child in the care of the petitioner, who is now the child's guardian. There is no court-ordered placement.
3. The child's father is Redact. He is incarcerated in a state prison, and is expected to remain there for several years.
4. The petitioner supervises the child's medical care and school status, and provides for his needs. The agency has no concerns about the adequacy of the petitioner's home environment.
5. The petitioner applied for Kinship Care for G.C. in September 2014, and was on a waiting list until December 4, 2014. The agency then sent parental approval letters to each parent, asking if each of them approved of having G.C. live with the petitioner. The incarcerated mother returned the letter, approving the arrangement. The incarcerated father returned the letter, disapproving of the arrangement. Therefore, the agency issued a denial notice to the petitioner on January 7, 2015. That notice advised that any appeal had to be filed within 45 days of the notice date. *See Exhibit 1, pp. 10-11.*
6. The petitioner placed a hearing request in the mail on March 18, 2015. The hearing request was received by the Division of Hearings and Appeals on March 23, 2015. Even using the postmark date, the appeal was filed more than 45 days after the January 7 denial letter.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment (see, Wis. Admin. 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).

The eligibility/review criteria for a relative who is a guardian under §48.977 versus a relative who is not a §48.977 guardian are different. Although the petitioner's mother is G.C.'s guardian, the paperwork in this hearing record does not state that she was appointed guardian pursuant to §48.977. When a child is living with a §48.977 guardian, the relative (with no criminal background) need only show that the kinship care placement is in the best interests of the child. Wis. Stat. §48.57(3n)(am).

For Kinship Care cases in which the relative is not a guardian appointed under §48.977, the conditions listed in §48.57(3m)(am) must be met. However, I cannot reach the question of whether or not this situation meets all of the criteria at §48.57(3m)(am), because the petitioner's appeal was filed several days too late. The provision on hearing jurisdiction in the Kinship Care statute reads as follows:

(f) Any person whose application for payments under par. (am) is not acted on promptly or is denied on the grounds that a condition specified in par. (am) 1., 2., 5. or 6. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for review of that action or failure to act. *Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition for review.*

(emphasis added)

Wis. Stat. §48.57(3m)(f). The Bureau's denial letter also clearly advises the petitioner that her appeal must be received by this Division within 45 days. Because the petitioner's appeal was not filed on time, it

is not possible for this hearing officer to take jurisdiction of the matter. Because I have no jurisdiction over the matter, I cannot decide the merits of the petitioner's case.

CONCLUSIONS OF LAW

1. The petitioner's appeal was untimely filed, per Wis. Stat. §48.57(3m)(f); therefore, the hearing officer has no jurisdiction to consider the merits of the appeal.

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, Room G200, 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 June, 2015

\sNancy J. Gagnon
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 June 3, 2015.

Jefferson County Department of Human Services
DCF - Kinship Care
DCF - Kinship Care