



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/168074

PRELIMINARY RECITALS

Pursuant to a petition filed August 15, 2015, 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 September 22, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal was timely filed.

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, Room G200
Madison, Wisconsin 53703

By: Stephanie Purpero, Lead Kinship Assessor, Kinship Care Worker
Professional Services Group
1126 South 70th Street, Suite N200
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On May 27, 2015, the Petitioner applied for Kinship Care benefits for her grandson TM. (Exhibit 2)
3. On July 2, 2015, PSG sent the Petitioner a Kinship Care Denial of Payment and Appeal Rights letter, advising her that her application for benefits was denied. (Exhibit 2)

4. The Petitioner filed an appeal that was received by the Division of Hearings and Appeals on August 26, 2015. (Exhibit 1)
5. Petitioner is the paternal grandmother of TM. (Testimony of Petitioner)
6. TM's father has no history of involvement with child protective services, no history of mental health issues and no history of alcohol or other drug (AODA) issues. (Testimony of Petitioner)
7. Petitioner has no concerns that TM would be abused if left in the care of his father. (Testimony of Petitioner)
8. Petitioner's concern is that TM's father is not financially stable. (Testimony of Petitioner)

DISCUSSION

In order for the Division of Hearings and Appeals to have jurisdiction to decide a case, an appeal must be timely. For cases involving the denial of Kinship Care benefits, an appeal must be filed within 45 days of notice denying benefits. *See Wis. Stats. §48.57(3m)(f)*

In the case at hand, the date of notice was July 2, 2015. Thus, Petitioner's appeal needed to be filed by August 16, 2015. Petitioner's appeal was not filed until August 26, 2015, which was 55 days after the denial. As such, Petitioner's appeal is untimely and no jurisdiction exists to hear the merits of her appeal. However, even if the Division of Hearings and Appeals had jurisdiction over this case, I would find that PSG acted correctly.

The Kinship Care benefit is a public assistance payment of \$232 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. To be eligible for the payments, 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). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

In this case Petitioner does not yet have guardianship, so Petitioner is not eligible to receive Kinship under Wis. Stats. §48.57(3n).

This case turns on whether Petitioner meets eligibility criteria under Wis. Stats. §48.57(3m)(am)(1-5) which states in pertinent part:

...A county department and, in a county having a population of 500,000 or more, the department shall make payments ... to a kinship care relative who is providing care and maintenance for a child if **all** of the following conditions are met:

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 interests 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, 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 or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

*§48.57(3m)(a)2(am), Wis. Stats.
Emphasis Added*

In the case at hand, there is insufficient evidence to support a finding that the child is at risk of becoming a child in need of protection and services under Wis. Stats. §48.13, which states in relevant part:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10M) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;
- (11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

There is no apparent risk that the child will be physically or sexually abused/exploited if they live with their father, Petitioner's son. The Petitioner testified that she had no concern that her son would abuse or exploit the child in any way, that she was unaware of her son having any of AODA issues; that she was not aware of her son having involvement with child protective services and that to her knowledge her son did not have any mental health issues. In addition, there is no evidence that the child has any serious health conditions. While there is a risk that the child might not have adequate food or shelter, that risk is based solely in poverty. In order to be considered a child in need of protection or services, the risk must

be caused by something other than poverty. (See subsections 10 and 10m, above) Based upon the foregoing, it is found that the child is not at risk of becoming a child in need of protection and services under *Wis. Stats. §48.13*.

Because the child is not at risk of becoming a child in need of protection or services, Petitioner is not eligible to receive kinship care benefits for the child, at this time.

PSG correctly denied the Petitioner’s application for kinship care benefits.

CONCLUSIONS OF LAW

Petitioner’s appeal was untimely.

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 Milwaukee,
Wisconsin, this 24th day of November, 2015

\sMayumi M. Ishii
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 November 24, 2015.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care