



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/168362

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 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 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency was correct in denying petitioner's application for Kinship Care benefits.

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, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner applied for Kinship on July 6, 2015. Petitioner is the paternal grandmother of J.N, T.R., and R.R..

3. On July 15, 2015 the Kinship Assessor conducted a home visit with petitioner.
4. On August 11, 2015 the Kinship agency issued notice to the petitioner informing her that her application for Kinship Care benefits had been denied because there was no need for the children to be placed with her and the children did not meet the criteria of a child in need of protection or services.
5. At the time of application, the children did not meet the criteria of a child in need of protection or services.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$232 per month in 2015, 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. Stat. §49.19). 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). See also, Wis. Admin. Code ch. DCF 58.

In the situation of a new application, the burden of proof lies with the applicant to demonstrate that she met these conditions, but that the agency wrongly denied her.

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, italics added.

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 §48.13 criteria are that the child needs protection because she has no parent or her parents have abandoned her, she 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.

The decision to deny the application was based on the fact that there are no risk factors present to put the children at risk should they live with their father. Currently their mother is incarcerated. The petitioner testified at hearing that their father does not have a job but travels out of town frequently. There was no other evidence presented to show that the children were at risk with their father so as to award Kinship to the petitioner. Again, the §48.13 criteria are that the children needs protection because they have no parent or their parents have abandoned them, they have been a victim of abuse or are 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. The evidence presented suggests that their father does not provide for their care regularly as he is not employed. The above cited statutory section does not take "fairness" into account, and administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. Based on the information presented, I must find that this situation does not meet the requirements for payment under the Kinship Care program.

CONCLUSIONS OF LAW

The agency was correct in denying petitioner's application for Kinship Care benefits.

THEREFORE, it is

ORDERED

The petition for review herein be 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 23rd day of November, 2015

\sKelly Cochrane
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 23, 2015.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care