



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

KIN/168558

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 2, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Department of Children and Families, by its agent, Professional Services Group - PSG in regards to the denial of Kinship Care benefits, a telephone hearing was held on September 29, 2015, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 10 days for the submission of additional information, which has been received.

The issue for determination is whether the Department, by its agents, correctly denied the petitioner’s application for Kinship Care benefits due the lack of an evidenced need for the living arrangements under program rules.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: [REDACTED], Kinship Care Worker,  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. She is the paternal grandmother of “T.R.”, age 15; and his brother, “D.R.”, age 13.

2. On a date unknown in this record, in May, 2015, [REDACTED] [REDACTED], biological mother of the two teenagers identified in Finding of Fact #1, above, dropped the two boys off at a relative's home in Milwaukee, Wisconsin, and did not return to pick them up.
3. [REDACTED] [REDACTED], biological father of the two teenage boys identified in Finding of Fact #1, above, was contacted by the relative where they boys had been left. He came to the relative's home on a date unknown in May, 2015, and picked up his two sons; and transported them to his mother's home. His mother is the petitioner. He asked her to take care of his two sons because he did not have a permanent address and was financially unable to provide for the children.
4. On or about July 22, 2015, the petitioner filed an application with the Kinship Care program seeking cash benefit for the needs of T.R. and D.R.
5. On July 31, 2015, [REDACTED] [REDACTED], an assessor from the Department's Kinship Care program agent, conducted a home visit with the petitioner. In her assessment, [REDACTED] found that:
  - (a) [REDACTED] [REDACTED] is employed; pays child support to the biological mother for T.R. and D.R.; lives in the Milwaukee area with a girlfriend; sees his two boys every day after work; and calls them every day to check on their well-being; and;
  - (b) [REDACTED] [REDACTED] works in the Milwaukee area as a day care employee; she lives in Milwaukee at an address unknown with at least two other children, ages 8 & 1. She last had contact with T.R. and D.R. when she dropped by the petitioner's residence unannounced on July 5, 2015, talked to the boys outside, and left without talking to the petitioner. Prior to that, she had visited the boys infrequently after leaving them in May, 2015, under circumstances unknown.
6. Ever since the father dropped the boys off at his mother's home, the petitioner has provided all food, clothing, shelter, parental guidance, and medical/dental health care management to the two boys. She reports that neither [REDACTED] [REDACTED] nor [REDACTED] [REDACTED] provide any food, clothing, shelter, or support to T.R. and D.R., and that is why she is applying for Kinship Care benefits. She concedes that [REDACTED] [REDACTED] does visit and call his two teenage sons frequently to check on them and apparently provide some parental guidance.
7. [REDACTED] [REDACTED] was asserted by the petitioner to have a third child, age unknown, living with her and the 8 & 11 year-old children.
8. On August 27, 2015, the Department, by its Kinship Care agent, issued a Notice to the petitioner informing her that her application for Kinship Care benefits for T.R. and D.R. had been denied due to the lack of any evidenced need for the living arrangement as defined under Kinship Care rules.
9. On September 2, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the Department's denial of her application for Kinship Care benefits.

### DISCUSSION

The Kinship Care benefit is a public assistance payment of \$226 per month per child paid to a qualified relative who bears no legal responsibility to support the child. 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 (as here), 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. See also, the DHFS policy memo *Volume 2 of the Kinship Care Questions and Answers*, p. 23, question 9, issued January 5, 1998. 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 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.

In, addition, it has been long-established that Kinship Care benefits are not provided to a caretaker merely due to the level of financial means possessed by an otherwise available biological parent.

The biological father is clearly available to provide care and support to his children. He has chosen not to do so, telling his mother he cannot afford it. However, [REDACTED] works three days a week. He pays child support to [REDACTED]. [REDACTED] has a daughter in common with [REDACTED] that lives with her. [REDACTED] apparently lives with his girlfriend in an apartment, as reported during the home visit and recorded in the assessment report, and likewise she apparently opposes taking the two teenage sons into their shared residence. See, Exhibit No. 1, at p. 8. It was also reported at the home visit that [REDACTED] provides food and clothing for his two teenage boys to the petitioner when he can afford it.

Conversely, the petitioner testified at the hearing and presented a letter from a Department Initial Assessment Specialist, [REDACTED], that says he does not have a residence. See, Exhibit #2. Likewise, the petitioner asserted that neither parent provides any food, clothing or money for the teenage boys.

I find her testimony on these two points to be self-serving, internally inconsistent with her home visit report to the assessor, contradicted by the admitted daily contacts in person and by phone of [REDACTED] and not credible. [REDACTED] may not have his own apartment, but is pretty apparent that he is employed and living at a fixed residence in Milwaukee with his girlfriend. In addition, he is in regular and daily contact with his children, directly and by phone, and he placed them with his mother. It is clear to me that the only reason he is not caring for them is that he has told his mother that he lacks the financial means; and his girlfriend opposes having the teenage sons live with them. The lack of financial means to care for his own biological reason is not a basis under law to obtain financial assistance from the State under the Kinship Care program.

Likewise, the biological mother clearly exercised her parental guidance rights as recently as May, 2015, when she chose to drop her two teenage sons off at a relative's home and not take them back to her home. She clearly works, and has two, if not three, children living with her. The evidence indicates she too is available to care for these children, but has chosen to make herself absent.

There are no known health or mental health issues, child protection issues, or drug or alcohol abuse issues present or alleged as to *either* biological parent.

Under these facts, I must conclude that the BMCW correctly denied the petitioner's application for Kinship Care because the living arrangement is not "needed". At a minimum, [REDACTED] [REDACTED] is available to provide care for his teenage sons, has a fixed residence, and has an income stream sufficient to pay child support to [REDACTED]. (Why he does so when the boys don't live with her was not explained in this record.) The lack of financial means is not a basis for a need for placement with others under Kinship Care law. Likewise, it appears that the biological mother, [REDACTED] [REDACTED], could be available as well, but she has chosen to send these children to live with their paternal grandmother. Kinship Care is not available under law and policy for this type of voluntarily agreed-upon arrangement.

### CONCLUSIONS OF LAW

The Kinship Care agency correctly denied the petitioner's Kinship Care application on behalf of T.R. and D.R. because there is a lack of an evidenced need for the living arrangement as defined by that program.

**THEREFORE, it is ORDERED**

That the petition for review herein be and the same is hereby 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 1st day of October, 2015

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\sKenneth D. Duren, Assistant Administrator  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on October 1, 2015.

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