



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

KIN/168592

PRELIMINARY RECITALS

Pursuant to a petition filed September 10, 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 regards to the denial of Kinship Care benefits, a telephone hearing was held on September 29, 2015, at Milwaukee, Wisconsin. At the request of both parties, the record was held open for 10 days for the submission of a [redacted] instrument delegating the powers of a parent.

The issue for determination is whether the Department, by its agents, has correctly denied the petitioner's application for Kinship Care benefits due to the lack of an evidenced need for the living arrangement.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [redacted], Kinship Care Worker, 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 (CARES # [redacted]) is a resident of Milwaukee County. On or about July 31, 2015, the petitioner filed an application for Kinship Care benefits for two (paternal) grandsons, to-wit, "L.O.", age 43 months, and his brother, "A.O.", age 17 months.

2. The petitioner took the two grandsons named in Finding of Fact #1, above, into her care from her adult son, the biological father, [REDACTED], and biological mother [REDACTED], on or about July 1 – 3, 2015. Apparently, both parents were present to drop off the children with the petitioner after driving them to Wisconsin. See, Exhibit #1, at p. 7. Since that time, the petitioning caregiver has provided all food, clothing, shelter, parental guidance and medical/dental care management. Neither child is of school-age at present.
3. The residence address of the biological mother, [REDACTED] [REDACTED], is unknown to the Kinship Care agency; purportedly, she lives in [REDACTED]. She has no present contact with her two sons by [REDACTED], and does not provide any cares, clothing or support to the caregiver for the needs of the two children. She did call her children every two weeks initially after the drop off, but has stopped calling.
4. On June 17, 2015, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] executed a POWER OF ATTORNEY FORE DELEGATION OF POWERS OF PARENT in the State of [REDACTED], [REDACTED], as executed before a Notary Public witnessing both parents' signatures. See, Exhibit #2.
5. On August 13, 2015, the Kinship Care program sent an assessor to the petitioner's home to conduct a standard home visit to assess the caregiver's eligibility for Kinship Care benefits. It was reported that the whereabouts of [REDACTED] [REDACTED] were unknown, and in [REDACTED]; and that she was no longer in contact with her children or the caregiver. The assessor was not provided with any information about [REDACTED]'s mental or physical health, nor were there any reported concerns of child protection issues or drug or alcohol abuse concerns.
6. [REDACTED] [REDACTED] lives in [REDACTED] with his maternal grandfather. He works about 15 hours per week as some type of home health care worker. He attends a college when he can afford to, but is not at present attending. He has no previously reported, medical or mental health issues, child protection concerns, or alcohol or other drug issues. At the hearing, his mother reported that [REDACTED] had made allegations that he had accused [REDACTED] of molesting one of his sons in 2014. She said the allegation was investigated and found not supported or substantiated, and the matter dropped. She asserted that [REDACTED] had mental health issues and made the allegation up. No documents or other evidence was presented corroborating any of these statements.
7. On September 4, 2015, the Department by its agent, issued a letter Notice to the petitioner informing her that her application for Kinship Care benefits was denied due to the lack of an evidenced need for the living arrangement. Rather, the two children could be living with a parent, but the family had chosen to make other voluntary arrangements to place them with the petitioner.

### 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).

The eligibility/review criteria for a relative who is a guardian under Wis. Stat. § 48.977 versus a relative who is not a §48.977 guardian are different. Although the petitioner's mother has a power of attorney to exercise parent powers from another state, (See, Exhibit #2) she is not a guardian pursuant to §48.977 or otherwise. (Note: 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 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 in order to try to obtain more work and/or go back to college. But he is in regular contact with his children and placed them with his mother. The only reason he is not caring for them is that he has told his mother that he lacks the financial means.

Likewise, the biological mother clearly exercised her parental guidance rights as recently as June, 2015, when she executed the POWER OF ATTORNEY instrument with ██████ to give the petitioner legal tools to act on behalf of her two children. She even brought one or both children to Wisconsin to deliver him or them to the petitioner in early July, 2015, less than a month before the petitioner applied for Kinship Care benefits. The evidence indicates she too is available to care for these children, but has chosen to make herself absent. The petitioner asserts that ██████ is not mentally healthy, and made false allegations against ██████ about molesting their child, but she has no other evidence that establishes this is in fact so.

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, ██████ is available to provide care for them, has a fixed residence, and has a limited income stream. The lack of financial means is not a basis for a need for placement with others under law. Likewise, it appears that the biological mother 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 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 2nd day of October, 2015

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\sKenneth D. Duren, Assistant Administrator  
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 October 2, 2015.

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