



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/169990

PRELIMINARY RECITALS

Pursuant to a petition filed November 6, 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 December 3, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly denied the petitioner's application for Kinship Care benefits for D.W., a minor relative, 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:

[REDACTED]
[REDACTED]
[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 32 year-old resident of Milwaukee County. In June, her father, [REDACTED], placed her minor sister, D.W., age 12, with her for her to care. Since a date unspecified in late June, 2015, she has provided all food, clothing, shelter, parental cares, and parental guidance to D.W.

2. Prior to June, 2015, D.W. lived with her biological mother, [REDACTED]. On a date unknown in May, 2015, the mother gave D.W. to [REDACTED] and indicated she could no longer financially provide for D.W.
3. On September 30, 2015, the petitioner filed an application for Kinship Care benefits for the needs of D.W.
4. D.W. apparently stayed with [REDACTED] for a short period of time, and then he gave her to the petitioner to provide cares, indicating he lived in an apartment with his girlfriend and needed time to get D.W. added to the lease.
5. At no time since June 1, 2015, has [REDACTED] provided any support to the petitioner for the needs of D.W., nor apparently, visited with D.W. He lives at a fixed and known Milwaukee address.
6. The biological mother lives in Milwaukee, with her grandmother. She has 5 other children and appears to have dispersed them to other relatives and friends due to the lack of a means to provide for them.
7. Neither biological parent has been shown to have any alcohol or other drug addiction issues (AODA) or Child Protection & Services (CPS) concerns at present.
8. On November 3, 2015, the Kinship Care Program issued a notice of denial letter to the petitioner finding that there was no evidenced need for the living arrangements; that there was no evidence demonstrating that this living arrangement was in the best interests of the child; and that the child does not now meet, nor is at risk of meeting, child protection and services criteria.
9. On November 6, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial of Kinship Care benefits.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$215 per month per child paid to a qualified relative who bears no legal responsibility to support the child. See, Wis. Admin. Code § DCF 58, generally. To be eligible for such 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). See also, Wis. Admin. Code § DCF 58.10.

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. 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 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.

Kinship Care cash benefits are not available to the petitioner under this constellation of facts. This placement is not "needed". See also, Wis. Admin. Code § DCF 58.10(1)(a). Rather, the biological father and the petitioner have reached the mutual agreement that it is better for all concerned if the child lives with her sister, and the biological mother has not interfered, at a minimum. However, both parents are living in the area, with fixed homes. It appears that [REDACTED] has employment as well. Finally, it appears from the evidence presented that the biological mother raised D.W. for the first 12 years of her life.

No credible evidence shows either parent has drug or alcohol abuse problems or present child neglect or abuse concerns.

This family is free to make whatever living arrangements they deem best for D.W. But that does not mean that the Kinship Program and the taxpayers must support that desired arrangement with cash benefits. Here, there is insufficient evidence in the record to show that the living arrangement is needed or in the best interests of D.W. Nor does it show this child is being abused, neglected or at risk of either condition. Therefore, I must conclude that the agency's denial was correct.

CONCLUSIONS OF LAW

The agency correctly determined that there is no need for the placement of petitioner's minor sister, D.W., with her, and therefore correctly denied her application for Kinship Care benefits.

NOW, 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 3rd day of December, 2015

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



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 3, 2015.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care