



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/169010

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Kinship-DCF in regard to Kinship Care, a telephonic hearing was held on October 20, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly seeks to discontinue petitioner's Kinship payments.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
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Respondent:

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

By: Julie Bischoff, Child Specific Resource Specialist

Saint A's
6737 W. Washington St.
Suite 4400
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County and has been receiving Kinship benefits.
2. In September 2015 the agency became aware that an adult member of petitioner's household was charged with two counts of 2nd Degree Reckless Homicide.

3. On September 17, 2015 the agency issued a notice to petitioner stating that it was discontinuing petitioner's Kinship payments because an adult member of petitioner's household was charged with two counts of 2nd Degree Reckless Homicide. Exhibit 1.

DISCUSSION

Eligibility for Kinship Care payments is governed by state law. Wis. Stat. §48.57(3m) and (3n); Wis. Admin. Code §DCF 58.01. Under state law, a person must satisfy several requirements to be eligible for Kinship Care. Wis. Stat. §48.57(3m)(am); Wis. Admin. Code §DCF 58.10.

One of the eligibility factors for the Kinship Care benefit is that,

The county department or department conducts a background investigation under sub. (3p) of the kinship care relative, any employee and prospective employee of the kinship care relative who has or would have regular contact with the child for whom the payments would be made and any other adult resident of the kinship care relative's home to determine if the kinship care relative, employee, prospective employee or adult resident has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

Wis. Stats., §48.57(3m)(am)4. According to the agency's representative, the Kinship program has developed a list of offenses that it has determined bars Kinship payments pursuant to this statutory section and that one of those offenses is 2nd Degree Reckless Homicide. Therefore, because an adult member of petitioner's household was charged with two counts of 2nd Degree Reckless Homicide, the agency determined it should discontinue petitioner's Kinship payments. This list was not presented at hearing, but I have no reason to doubt the representative's statements that this is true.

The statute defining second degree reckless homicide states that whoever "recklessly causes the death of another human being is guilty of a Class D felony." Wis. Stat. §940.06(1). The notes to that statutory section also state that "second-degree reckless homicide statute requires both the creation of an objectively unreasonable and substantial risk of human death or great bodily harm and the actor's subjective awareness of that risk." None of the details surrounding the adult resident's arrest for these charges were provided at hearing. No details about the Kinship child were provided either. I also have no information to show that this adult resident was any kind of caregiver to the child. The petitioner also testified that the court-ordered placement of the child with her had not been changed due to this arrest. I have no evidence to show that this arrest was of concern to the courts that placed the child with her, done presumably because it was in the child's best interests in the first place. Accordingly, I have no information to show that the arrest could *adversely affect the child or the kinship care relative's ability to care for the child*. This is the statutory language I must follow. As such, I find that the agency has not met its burden to show that it correctly seeks to discontinue petitioner's Kinship payments.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly seeks to discontinue petitioner's Kinship payments.

THEREFORE, it is

ORDERED

That the matter is remanded to Saint A's with instructions to: rescind and reverse the termination of the petitioner's Kinship Care benefit. These actions are to be completed within 10 days of this decision.

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 6th day of January, 2016

\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 January 6, 2016.

Kinship-DCF
DCF - Kinship Care