



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 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 November 11, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency erred in denying kinship care payments.

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:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner applied for kinship payments for three children.
3. The mother of the three children is [REDACTED]. [REDACTED] is capable of caring for the children herself but prefers not to.

4. The agency denied kinship payments.

DISCUSSION

Petitioner conceded that the mother is capable for caring for the children but does not want to because her friends are more important to her. Additionally, there is substantial evidence suggesting that the mother is living in the home with the children and petitioner. The case does not meet any of the criteria for kinship payments to petitioner.

The Kinship Care benefit is a public assistance payment paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. Wis. Adm. Code, §§DHS 201.17; 201.31. 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 Petitioner apparently fits the definition of a “Kinship Care relative,” which is stated at Wis. Stats., § 48.57(3m) (a).

The eligibility requirements for the Kinship Care Program are mandated by statute:

(am) From the appropriations under s. 20.435 (7) (b) and (o), the department shall reimburse counties for payments made under this subsection. A county department shall make payments...to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department for payments under this subsection and the county 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 interests of the child.
2. The county 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.

Wis. Stats. § 48.57 (emphasis added). The criteria to which the statute refer to a child’s need for 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. Other criteria under those sections are that the child has not been immunized, the parent is not seeking medical care for the child, the child is habitually truant while in the parent’s custody, or the child has committed a specified delinquent act while in the parent’s custody.

The petitioner was unable to refute that there was “no legal reason” that the mother, at the time of the application and agency decision, could not care for the children. There was no evidence presented at the hearing to establish that there was a “legal need” for Kinship Care benefits, when the mother of the children resided with the petitioner, pursuant to sec. 48.13 or 938.13, Wis. Stats. Accordingly, on this record, I conclude that the county agency correctly denied the petitioner’s Kinship Care benefits effective, due to “no legal need” as the children’s mother was residing with her three children in the same household with the petitioner.



CONCLUSIONS OF LAW

The Department agent did not err in denying kinship care benefits to petitioner as the mother was residing in the home at the time of the application and investigation.

THEREFORE, it is **ORDERED**

That this appeal is 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 8th day of January, 2016

John P. Tedesco
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 8, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care