



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/171244

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 5, 2016, under Wis. Stat., §48.57(3m)(f), to review a decision by the Rock County Human Services Dept. to deny Kinship Care, a hearing was held on February 18, 2016, at Janesville, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the agency correctly denied Kinship Care with a finding that the placement was not in the child’s best interest.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

]

Respondent:

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

By: [REDACTED], Social Worker  
Rock County Human Services  
P.O. Box 1649  
Janesville, WI 53545

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. Petitioner applied for Kinship Care of November 6, 2015 for her five-year-old great-grandson. By a letter dated December 8, 2015, the agency denied the application after concluding that the placement was not in the child’s best interest.

3. The agency found that petitioner has a number of convictions, all property crimes like theft, forgery, and issuance of worthless checks. She was sentenced to two years in prison in 2001 for forgery. She also has a current felony charge pending for theft from a business.
4. In December, 2014 the Rock County juvenile court issued an order removing a teenage grandchild from petitioner's care on the basis that the placement was not in his best interest. The court report included concerns that petitioner was abusing the boy verbally and physically and that she was using marijuana on a daily basis.

### 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. In Wisconsin, this benefit replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. Wis. Admin. 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).

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. 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.

"Best interests" is defined in the Wisconsin Administrative Code as follows:

If the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child by making a reasonable effort to contact all the child's custodial parents to determine that he or she or they are aware of and have consented to the living arrangement.... If consent is received, the kinship living arrangement is determined to be in the best interests of the child. If the agency, after making reasonable efforts to contact all custodial parents, is unable to contact the custodial parents or custodial parent, the agency may determine that the inability to make such contact indicates that the placement with the relative is in the best interests of the child.... *In addition to determining that parental consent exists, the agency shall determine that both of the following conditions exist:*

*a. The applicant's or kinship care relative's parenting history and parenting ability do not include behaviors or actions that are contrary to the health, safety or welfare of the child.*

b. A minor child residing in the applicant's or kinship care relative's home has not committed any delinquent acts or other acts that endangered the safety of another child or that could adversely affect the child for whom the kinship care payment would be made or the applicant's or kinship care relative's ability to care for the child.

Wis. Admin. Code, §DCF 58.10(2)(a), portion italicized to stress the issue in this case.

I conclude that the agency made the correct determination. While the criminal convictions relate mainly to property crimes that would not necessarily affect petitioner's care of the child, the action by the juvenile court makes this determination necessary. Petitioner minimized the juvenile court action, saying that the boy was a troubled teen who caused most of the problems himself, but nevertheless there is a court report stating that petitioner verbally and physically abused a child in her care, and concluding that placement in her home was not in the child's best interest. A circuit court judge made that determination, making it difficult for me now to say that placement of another child is in the child's best interest.

Furthermore, while petitioner testified that the allegations in the report were made up by the disgruntled grandson, the allegation of use of marijuana in petitioner's home caught my eye. Looking through petitioner's criminal history I found that in 2012 petitioner was charged with possession of THC. The charge was dismissed as part of a resolution to other charges, but it amounts to corroboration of the 2014 court report.

### **CONCLUSIONS OF LAW**

The Kinship Care agency correctly denied petitioner's application with the determination that her great-grandson's placement with her was not in his best interest.

**THEREFORE, it is** **ORDERED**

That the petition for review 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 4th day of March, 2016

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\sBrian C. Schneider  
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 March 4, 2016.

Rock County Department of Social Services  
DCF - Kinship Care  
DCF - Kinship Care