



FH

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN- 173025

PRELIMINARY RECITALS

On March 22, 2016, the above petitioner filed a hearing request under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to challenge a decision by the Professional Services Group - PSG regarding Kinship Care. The hearing was held on April 20, 2016, by telephone, from Madison, Wisconsin.

The issue for determination is whether there is a need for placement of petitioner's brother with petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Professional Services Group - PSG
1126 S 70th Street
Suite N 200
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of [REDACTED] County.
2. Petitioner's 17 year old brother, WC, resides with petitioner. Petitioner underwent a Kinship Care reassessment on February 26, 2016.
3. After the reassessment the agency sent petitioner a notice dated March 17, 2016, informing that Kinship Care would end because the placement was not needed. Benefits have continued pending this decision.
4. The child's mother is also petitioner's mother, AC. The child's father is WW. The assessor spoke with AC, who reported that she was residing in a two-bedroom apartment with a roommate, and is presently employed part-time. AC has a history of AODA, but has been maintaining her sobriety for the past 5 years, except for an OWI conviction in 2013. She indicated that WC could not reside with her as she does not have space for him, and would need time to save for a larger apartment.
5. The assessor was informed that WW has a history of AODA issues, and frequent incarcerations. He has remarried, and is presently unemployed. He rents a 3-bedroom home in [REDACTED]. He resides with his wife; he has three other children who live on their own.

DISCUSSION

The Kinship Care benefit is a public assistance payment paid to a qualified relative who bears no legal responsibility to support a related child. In Wisconsin, this benefit replaced the former Non-Legally Responsible Relative (NLRR) AFDC payment. 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.

The primary criteria under §§48.13 and 938.13 at issue in Kinship Care cases 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*. 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 testified that WC has resided with her for 5 years. She further stated that WC's father has not been a consistent presence in petitioner's life. However, while it appears that petitioner was eligible when she first took in her brother, WC's parent's situations have changed. Petitioner's mother has indicated that she cannot take him due to her inability to afford the proper size apartment, and the record contains no indication as to why WC's father could not accommodate him. At the present time, the respondent has established that WC could reside with his mother or father, and that the placement with petitioner is not "necessary" under present regulations.

CONCLUSIONS OF LAW

The agency has established that the need for placement of petitioner's brother with petitioner no longer exists.

THEREFORE, it is ORDERED

That the petitioner's appeal 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, **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 7th day of July, 2016

\s _____
Peter McCombs
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 July 7, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care