



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: KIN - 200525

PRELIMINARY RECITALS

Pursuant to a petition filed November 16, 2020, under Wis. Stat., §48.57(3m)(f), to review a decision by the Monroe County Dept. of Human Services to discontinue Kinship Care, a hearing was held on January 6, 2021, by telephone.

The issue for determination is whether the agency correctly closed Kinship Care because petitioners failed to apply for a foster license.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 West Washington Avenue
Madison, WI 53703

By: [REDACTED]
Monroe County Dept. of Human Services
14301 Cty Hwy B, Box 19
Sparta, WI 54656-4509

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioners (CARES # [REDACTED]) are residents of Monroe County.
2. In the summer, 2020 petitioners were given placement of their nephew through a children's court order. They were granted Kinship Care.

3. On September 17, 2020 the Kinship worker gave petitioners a blank application for a foster home license. The paperwork included language that it had to be completed within 45 days.
4. In early October the worker emailed petitioners to remind them that the application had to be filed by November 1, 2020.
5. The application was not filed. By a notice dated November 2, 2020, the agency denied future Kinship Care because petitioners did not comply with foster licensing requirements.

DISCUSSION

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. 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 eligibility requirements were changed in Wisconsin Act 28, the 2009 biennial budget bill. Wis. Stat., §48.57(3m)(am)1 now reads that one of the conditions of Kinship Care eligibility is that: “The kinship care relative applies to the county department or department for payments under this subsection and, if the child is placed in the home of the kinship care relative under a court order, for a license to operate a foster home.” The change was made by the legislature to shift the funding for care of children from the Kinship Care program to the foster care program. See DSP Memo Series no. 2010-09, dated September 17, 2010.

Therefore, under current rules when a child is placed by a court in a relative’s home, the relative must apply for both Kinship Care and a foster home license. If the caretaker relative does not complete the foster licensing process, the Kinship Care agency must discontinue the Kinship Care payments. This requirement is set out in the Wis. Admin. Code, §DCF 58.09; see also DSP Memo Series no. 2012-10, dated November 5, 2012, which explains the time lines for the application process as well as the requirement that the Kinship Care agency discontinue payments if the caretaker does not complete the foster licensing process.

Based on the rules, the agency had no choice but to discontinue Kinship payments when petitioners failed to file the foster licensing application. Petitioners’ failure to note the time limits on the paperwork, and the failure to see the email telling them to apply by November 1, cannot be considered a good cause basis for the failure.

That said, both the administrative code provisions and the DSP Memo are silent on what to do if the caretaker fails to file the foster application. There are provisions for continuing Kinship Care if there are delays in processing the filed application, but nothing about how to handle the matter if the foster application is filed late. Here petitioner finally filed the foster application on November 17, 2020. I see no reason why the agency cannot process the application now, and determine foster licensing eligibility. Kinship Care has been stopped correctly, but foster payments could start anytime if they meet the licensing requirements. If they do not meet the licensing requirements, then Kinship Care potentially could start again based upon Admin Code, §DCF 58.09(3).

CONCLUSIONS OF LAW

The agency correctly closed Kinship Care eligibility because petitioners failed to file a required foster home application timely.

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, 4822 Madison Yards Way, 5th Floor North, 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.

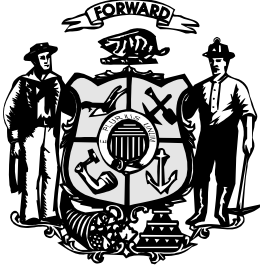
APPEAL TO COURT

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 West Washington Avenue, **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, 2021

\s _____
Brian 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 January 8, 2021.

Monroe County Department of Human Services

DCF - Kinship Care

DCF - Kinship Care