

STATE OF WISCONSIN
Department of Health and Family Services
Division of Children and Family Services

MEMO SERIES DCFS-97-11
November 11, 1997
RE: KINSHIP CARE; APPEAL OF
ASSESSMENT DECISIONS

To: Area Administrators/Assistant Area Administrators
Bureau Directors
County Departments of Developmental Disabilities
Services Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Direct Services Supervisors
Licensing Chiefs
Section Chiefs
Tribal Chairpersons/Human Services Facilitators

From: Susan N. Dreyfus
Administrator
Division of Children and Family Services

Throughout the early implementation of the Kinship Care program, county and tribal staff have spoken to us numerous times regarding the inflexibility of criminal background criterion for payment approval. We have discussed this with the Department of Administration and the Legislative Fiscal Bureau. I am pleased to report that the Legislature recently created appeal processes for the Kinship Care Program. These appeal processes were part of the State's biennial budget (1997 WI Act 27). There are actually two processes, depending upon whether a Kinship Care payment is denied on the basis of the criminal record or on the basis of some other criterion or the Kinship Care agency did not act on the application in a timely manner.

Criminal Background

If a Kinship Care payment is denied on the basis that an applicant for a Kinship Care payment has had a conviction or had a penalty imposed that is prohibited under s.48.57(3p)(g)1., 2. or 3. or that any other adult living in the home or any employe of the Kinship Care applicant who might have regular contact with the child has any such conviction, the applicant may ask that the denial decision be reviewed. To seek such a review, the applicant must submit a request for a review to the Director of the County Department of Health/Social Services (or his or her designee) or the designee of the governing body of a Tribe, if the Tribe is administering the Kinship Care Program.

The review by the designated person shall take into consideration, but is not limited to, the following factors:

1. The amount of time that has elapsed between the conviction or imposition of the penalty and the date of the review.
2. The nature of the violation or penalty and how that violation or penalty affects the ability of the Kinship Care provider to care for the child.

DOCUMENT SUMMARY

This memo provides new information relative to recent legislative changes regarding appeals of decisions under the Kinship Care Program.

3. Whether making an exception to the denial would be in the best interests of the child.

If the review and consideration of these factors determines that the violation or penalty would not adversely affect the child and that allowing the exception would be in the best interests of the child, the designated person may approve the Kinship Care payment. Any decision made as a result of this review is not appealable to the Division of Hearings and Appeals under Ch. 227.

Other Reason for Denial or Delayed Action/Inaction on the Part of the Kinship Care Agency

Other Reason. If a payment is denied for a reason other than the applicant's criminal background (or that of any other adult resident of the applicant's home or that of a certain employe of the applicant), there is a separate appeal process. The other reasons for denial are the following:

1. That there is no need for the living arrangement. (s.48.57(3m)(am)1.)
2. That the living arrangement is not in the best interests of the child. (s.48.57(3m)(am)1.)
3. That the child does not currently meet or would be unlikely to meet in the future any of the criteria under s.48.13 (CHIPS) or s.938.13 (JIPS). (s.48.57(3m)(am)2.)
4. The Kinship Care relative does not cooperate with the agency in the application process. (s.48.57(3m)(am)5.)
5. The child is receiving supplemental security income (SSI) under 42 USC 1381 to 1383c or state supplemental payments under s.49.77. (s.48.57(3m)(am)6.)

In the above situation, the applicant can appeal the denial decision to the Division of Hearings and Appeals (in the Department of Administration). The appeal must be made within 45 days of the denial decision. If the person is currently receiving AFDC/NLRR or Kinship Care payments and the person appeals the decision within 10 days of the denial, then the payment cannot be discontinued until a decision is rendered from the appeal. If the appeal result upholds the denial, any payment made to the person during the period of appeal can be recovered by the county or tribe. If the appeal is made after 10 days from the denial, then the payments can be discontinued. However, if the appeal result overturns the denial decision, then payments must be made to the person for the period from the date that the payments were discontinued.

Attached to this memo is an updated "Model Letter of Notice of Non-Approval of Kinship Care Payment."

Inaction or Delayed Action. Currently, it is this Department's policy that a county or tribe must take action on a Kinship Care application within 30 days of receiving the application. A decision coming after 30 days would be considered inaction or delayed action. In such a circumstance, the applicant may appeal the inaction or delayed action within 45 days of that inaction or delay. So a person may request an appeal in the period ranging from days 31 to 75 after submitting an application if no action has been taken on that application.

Kinship Care agencies should modify their application forms to notify applicants of their right to appeal inaction or delayed action on the application.

We will continue to work to improve this appeals system since this legislation was regarded as a temporary solution. In fact, the appeal language discussed above is designed to expire around July 1, 2001 (it will actually expire when the 2001-03 biennial budget is signed). As a result, I would appreciate any comments you might have on this process and any suggested changes you might have.

Attached to this memo is the statutory language from 1977 WI Act 27 relating to the above issues.

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