

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Petitioner

Reg. No: 2005-16564
Issue No: 6029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Dates:
March 23 and May 11, 2006
[REDACTED] County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 722.627; upon the petitioner's request for a hearing. After due notice, an in-person hearing was held on Thursday, March 23, 2006 that was continued to a telephone hearing on Thursday, May 11, 2006. The claimant personally appeared and testified with her attorney, [REDACTED], from the [REDACTED].

ISSUE

Whether the department properly maintained the petitioner's name on the Child Abuse and Neglect Central Registry for child abuse?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On June 30, 2004, a Relative/Fictive Kin/Guardianship Home Study Outline was conducted of the petitioner's household before the placement of the four (4) B children, which included [REDACTED]. The petitioner and her husband were recommended to be granted emergency temporary guardianship over the four (4) B children. The petitioner had passed the background checks and has been caring for the four children under power of attorney since their father's arrest in late [REDACTED]. The petitioner and her husband had been involved in the B children's lives for the past 1 ½ years through church. The petitioner and her husband were committed to meeting the needs of the B. children and have been observed to be stable, nurturing, affectionate, firm, and appropriate. Department Exhibits 10-12.

In addition, the petitioner and her husband reported that they have occasionally used physical discipline methods with their own children, which included swats with a wooden spoon and a spoonful of vinegar for using bad language. The physical discipline was used occasionally, but the removal of privileges was more effective with their children. The petitioner and her husband stated that they are fully willing to abide by the department's discipline policy and will not employ physical discipline with the B children. Department Exhibit 11.

(2) On August 23, 2004, an allegation was made that the petitioner had abused [REDACTED] by hitting her with a wooden spoon. [REDACTED] had bruises on her buttocks. [REDACTED] disclosed during a supervised visit with her father that the petitioner had used a wooden spoon to punish her. Department Exhibit 31.

(3) On August 23, 2004, [REDACTED] was removed from the petitioner's home and placed in a licensed foster care home. Department Exhibit 50.

(4) At all times relevant to this matter, the petitioner, with a date of birth of [REDACTED] was living in the home with [REDACTED], with a date of birth of [REDACTED], and the petitioner's husband, [REDACTED], with a date of birth of [REDACTED]. A guardianship had been established with the petitioner as a "fictive kin" placement for [REDACTED]. Department Exhibits 18 and 31.

(5) On August 26, 2004, the [REDACTED] unit was requested by the Zone Office to initiate an independent CPS investigation regarding the petitioner. A medical examination was requested because the child was under five, and the explanation of injuries was suspicious. Department Exhibit 30.

(6) On [REDACTED], a medical examination was completed at the [REDACTED]. The doctor reported that the bruise on her left posterior thigh was a bit more of an unusual location for bruising and is therefore somewhat more suspicious. However, it does not appear to be of a particular shape of a spoon although repeated blows make the bruise look that large. Department Exhibits 30 and 64.

(7) On October 19, 2004, the CPS worker based on her investigation determined that there was a preponderance of evidence to support the allegation that the petitioner spanked [REDACTED] with a wooden spoon and caused bruising on her buttocks. In addition, the Family Risk Assessment scored a high-risk level of abuse and indicated that the case must be opened for CPS services and dispositioned under Category II. The petitioner's name will be placed on Central Registry under physical abuse. This case is further being opened/closed for services, as the petitioner did not wish to participate in services. Department Exhibits 46-48.

(8) On October 19, 2004, the department substantiated child abuse due to physical injury against the petitioner for [REDACTED] and placed the petitioner's name on Central Registry with a certified notice being sent to the petitioner. Department Exhibits 13-17.

(9) Subsequently, the petitioner filed a request to have her name expunged from the Central Registry.

(10) On July 18, 2005, the department sent the [REDACTED] a written notice that her expunction request was denied. Department Exhibits 17-18.

(11) On August 3, 2005, the department received the petitioner's hearing request on the denial of her request for expunction.

CONCLUSIONS OF LAW

The Child Protection Law provides for the reporting of child abuse/neglect and requires specific individuals to make reports of suspected abuse and neglect. The Department of Human Services maintains a Central Registry where it files reports and records of child abuse and neglect as directed by the Child Protection Law. See the Child Protection Law, 1975 Public Act (PA) 238, as amended, MCL 722.621-722.638. Department policies are found in the Children's Protection Services Manual (CFP).

The protective services hearings process is a quasi-judicial, contested case proceeding required by law to determine if a petitioner's name must be remain for life on the Central Registry as a perpetrator of abuse and/or neglect. When a hearing is requested, the presiding Administrative Law Judge conducts a de novo review, in which the agency has the threshold burden to prove, by a preponderance of the evidence, that petitioner committed child abuse and/or neglect as defined in the Child Protection Law. For cases investigated on or after 7-1-99, if this threshold burden is met, then the agency must also prove that the matter has been properly

placed on the Central Registry in conjunction with the provisions of Section 8d of the Child Protection Law, MCL 722.628d; MSA 25.248(8d).

On [REDACTED], a Relative/Fictive Kin/Guardianship Home Study Outline was conducted of the petitioner's household before the placement of the four (4) B children, which included [REDACTED]. The petitioner and her husband were recommended to be granted emergency temporary guardianship over the four (4) B children. The petitioner had passed the background checks and has been caring for the four children under power of attorney since their father's arrest in late [REDACTED]. The petitioner and her husband had been involved in the B children's lives for the past 1 ½ years through church. The petitioner and her husband were committed to meeting the needs of the B children and have been observed to be stable, nurturing, affectionate, firm, and appropriate. Department Exhibits 10-12.

In addition, the petitioner and her husband reported that they have occasionally used physical discipline methods with their own children, which included swats with a wooden spoon and a spoonful of vinegar for using bad language. The physical discipline was used occasionally, but that the removal of privileges was more effective with their children. The petitioner and her husband stated that they are fully willing to abide by the department's discipline policy and will not employ physical discipline with the B children. Department Exhibit 11.

On [REDACTED], an allegation was made that the petitioner had abused [REDACTED] by hitting her with a wooden spoon. [REDACTED] had bruises on her buttocks. [REDACTED] disclosed during a supervised visit with her father that the petitioner had used a wooden spoon to punish her. Department Exhibit 31. On [REDACTED] was removed from the petitioner's home and placed in a licensed foster care home. Department Exhibit 50.

On [REDACTED], the [REDACTED] County CPS unit was requested by the Zone Office to initiate an independent CPS investigation regarding the petitioner. A medical examination was requested because the child was under 5 and the explanation of injuries was suspicious. Department Exhibit 30.

On August 26, 2004, the CPS caseworker attempted to telephone the petitioner's residence at [REDACTED], but the phone line was busy. Department Exhibit 32. On August 27, 2004, the CPS caseworker attempted to contact the petitioner, but there was no answer. Department Exhibit 33. On August 27, 2004, the CPS caseworker received a voicemail from the petitioner's husband, [REDACTED], who was subsequently advised by the CPS caseworker that he would be called back regarding appointments and interviews for his family next week. Department Exhibit 33.

On August 27, 2004, a hearing was held in [REDACTED] County about the guardianship of [REDACTED], which was attended by the [REDACTED] County CPS worker. During the hearing, the judge ordered an assessment from the [REDACTED]. Department Exhibit 32.

On [REDACTED], a medical examination was completed at the [REDACTED]. The doctor reported that the bruise on her left posterior thigh was a bit more of an unusual location for bruising and is therefore somewhat more suspicious. However, it does not appear to be of a particular shape of a spoon; although repeated blows make the bruise look that large. Department Exhibits 30 and 64.

On August 27, 2004, a preliminary hearing was held because guardianship had been previously terminated without a hearing. The [REDACTED] County Family and Children's Services Supervisor stated during the previous week at a visit with [REDACTED] father that [REDACTED] said she was

“spanked by a wooden spoon.” [REDACTED]. pointed to her left buttock. The CPS worker observed with a witness, a bruising on the top buttock of approximately a “golf ball size bruise.” The other seven-year-old in the household witnessed [REDACTED]. fall and get the injury. Department Exhibit 32.

Next, the [REDACTED] worker testified that [REDACTED] stated that she had a bruise on her left buttock. [REDACTED]. stated that she got the bruise by falling forward, then clarified that the petitioner hit her with a spoon. Department Exhibit 32. The petitioner testified that she had not used the spoon since she had been advised not to at the time of the home study, which cited a face-to-face on June 3 and 17, 2004, with a completion date of June 30, 2004 (Department Exhibits 61-63). The petitioner stated that she and her husband were not home when the incident happened. She was told by her seven-year-old child that [REDACTED]. tried to jump off a chair and fell on the castors. The petitioner stated that she saw the bruise, but did not report it FIA because it was just a bruise. The judge ordered an interview from the [REDACTED]. Department Exhibit 33.

On [REDACTED], an assessment of [REDACTED]. was conducted at the [REDACTED] [REDACTED] using the Forensic Interviewing Protocol. [REDACTED] stated that she had a bruise on her bottom, which was all gone. [REDACTED]. stated that the petitioner did it with a spoon. The doctor at the assessment center viewed the photographs of [REDACTED]. injuries determining that it was possible for the injuries to be “two impact marks.” Department Exhibits 33-34.

On [REDACTED] there was a continuation placement hearing at [REDACTED] County Courthouse. The [REDACTED] physician testified that he saw [REDACTED] at the emergency room on [REDACTED]. He saw bruises on her knees, but did not observe bruises on her buttocks. The physician did observe bruising on both back thighs that were one-third of the way up the thigh, above the knees. The physician testified that it was

unusual for children to have this type of bruise on the back of the thigh. The bruises appeared to be older than one day, which he would consider “suspicious.” The physician was shown pictures of [REDACTED] buttocks on the day that she was removed from the petitioner’s home. In his opinion, he stated that it was possible for the bruise to be caused by a fall or wooden spoon. He further stated that he believed that if she fell on a chair there, would be one bruise where in the photograph, it looks like two bruises, which makes the bruise appear to be caused by something other than a fall. [REDACTED] did not tell the physician how she got the bruise on her buttocks.

Department Exhibit 42.

On [REDACTED], the seven-year-old child, [REDACTED], was forensically interviewed at the [REDACTED] Children’s Assessment Center. Allegedly, [REDACTED]. were in the office together when the incident occurred. [REDACTED]. stated that [REDACTED]. liked to “play with us and fell off the side of the chair.” In addition, [REDACTED]. stated that [REDACTED]. saw three little bruises at bath time. [REDACTED]. stated that she was spinning around in a blue chair with her legs sticking out as she held on to the sides of the chair. [REDACTED]. was running, trying to jump on [REDACTED]., but [REDACTED]. fell to the side of the desk and unto the ground. [REDACTED] stated that she did not see [REDACTED]. hit anything, and then stated that [REDACTED]. hit a knob on the desk/cabinet. [REDACTED]. stated that [REDACTED]. fell on her left side. [REDACTED], then, came in the room and rocked [REDACTED]. Petitioner and her husband were at the races and not at home according to [REDACTED] testimony. [REDACTED] took a bath after the petitioner came home. The petitioner saw the bruises and told [REDACTED]. that she was okay. Department Exhibit 44.

On [REDACTED], the sixteen-year-old child, [REDACTED] was forensically interviewed at the [REDACTED]. The petitioner and her husband are her guardians as she was placed with them due to her father’s abuse and neglect. After the incident, [REDACTED]. came out the room and told that [REDACTED]. hit and fell on something. [REDACTED] stated that she went and picked

up [REDACTED]. and rocked her in the living room. [REDACTED] did not see any injuries on [REDACTED]. [REDACTED] didn't notice any bruises on [REDACTED]. until next day. [REDACTED]. also stated that the petitioner and her husband were not at home, but at the races when the incident happened. Department Exhibit 45.

The Child Protection Law reads in part:

A person who is the subject of a report or record made pursuant to this act may request the department to amend an inaccurate report or record from the Central Registry and local office file. A person who is the subject of a report or record made pursuant to this act may request the department to expunge from the Central Registry a report or record in which no relevant and accurate evidence of abuse or neglect is found to exist. A report or record filed in a local office file shall not be subject to expunction except as the department shall authorize, when considered in the best interest of the child. MCL 722.627(5).

Section 2 of the Child Protection Law, MCL 722.622 includes the following relevant definitions:

"Central Registry" means the system maintained at the department that is used to keep a record of all reports filed with the department pursuant to this act in which relevant and accurate evidence of child abuse or neglect is found to exist and which is maintained at the department....

"Child abuse" means harm or threatened harm to a child's health or welfare that occurs through non-accidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment, by a parent, legal guardian, or any other person responsible for the child's health or welfare or by a teacher, teacher's aide, or a member of the clergy....

"Relevant evidence" means evidence having a tendency to make the existence of a fact that is at issue more probable than it would be without the evidence....

"Expunge" means to physically remove or eliminate and destroy a record or report....

"Local office file" means the system used to keep a record of a written report, document, or photograph filed with and maintained by a county or a regionally based office of the department....

“Person responsible for the child’s health or welfare” means a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or, except when used in section 7(2)(e) or 8(8), nonparent adult; or an owner, operator, volunteer, or employee of any of the following:

- (i) A licensed or registered child care organization.
- (ii) A licensed or unlicensed adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, Act No 218 of the Public Acts of 1979, being section 400.703 of the Michigan Compiled Laws.

“Structured decision-making tool” means the department document labeled “DSS-4752 (P3)(3-95)” or a revision of that document that better measures the risk of future harm to a child.

Physical Abuse

Physical Abuse (Injury) means a nonaccidental occurrence of any of the following:

- . death
- . deprivation or impairment of any bodily function or part of the anatomy
- . permanent disfigurement
- . a temporary disfigurement Figure 2, “Disfigurement: Black’s Law Dictionary: That which renders unsightly, misshapen, or imperfect, or deforms in some manner.” on page 2 which requires medical intervention or which occurs on a repetitive basis
- . brain damage
- . skull or bone fracture
- . subdural hemorrhage or hematoma
- . dislocations

- . sprains
 - . internal injuries
 - . poisoning
 - . burns
 - . scalds
 - . bruises, welts
 - . open wounds
 - . loss of consciousness
 - . adult human bites
 - . provoked animal attacks CFP, Item 711-5, pp. 2 and 3.
1. Nonaccidental: Expected, intentional, incidental, and/or planned behavior on the part of the parent, caretaker or person responsible for the child's health and welfare, which results in physical or mental injury to a child. An action which a reasonable person would expect to be a proximate cause of an injury.
 2. Disfigurement: Black's Law Dictionary: That which renders unsightly, misshapen, or imperfect, or deforms in some manner. CFP, Item 711-5, p. 2.

Under Section 8d of the Child Protection Law MCL 722.628d the categories and the departmental response required for each category, are the following:

Category V - services not needed. Following a field investigation, the department determines that there is no evidence of child abuse or neglect.

Category IV - community services recommended. Following a field investigation, the department determines that there is not a preponderance of evidence of child abuse or neglect, but the structured decision-making tool indicates that there is future risk of harm to the child. The department shall assist the child's family in voluntarily participating in community-based services commensurate with the risk to the child.

Category III - community services needed. The department determines that there is a preponderance of evidence of child abuse or neglect, and the structured decision-making tool indicates a low or moderate risk of future harm to the child. The department shall assist the child's family in receiving community-based services commensurate with the risk to the child. If the family does not voluntarily participate in services, or the family voluntarily participates in services, but does not progress toward alleviating the child's risk level, the department shall consider reclassifying the case as Category II.

Category II - child protective services required. The department determines that there is evidence of child abuse or neglect, and the structured decision-making tool indicates a high or intensive risk of future harm to the child. The department shall open a protective services case and provide the services necessary under this act. The department shall also list the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the Central Registry, either by name or as "unknown" if the perpetrator has not been identified.

Category I - court petition required. The department determines that there is evidence of child abuse or neglect and one or more of the following are true:

- (i) A court petition is required under another provision of this act.
- (ii) The child is not safe and a petition for removal is needed.
- (iii) The department previously classified the case as Category II and the child's family does not voluntarily participate in services.
- (iv) There is a violation involving the child, of a crime listed or described in Section 8a(1)(b), (c), (d), or (f) or of child abuse in the first or second degree as prescribed by Section 136b of the Michigan Penal Code, 1931 PA 328, MCL 750.136b.

At all times relevant to this matter, the petitioner, with a date of birth of [REDACTED] was living in the home with [REDACTED], with a date of birth of [REDACTED], and the petitioner's husband [REDACTED] with a date of birth of [REDACTED]. A guardianship had been established with the petitioner as a "fictive kin" placement for [REDACTED]. Department Exhibits 18 and 31.

This Administrative Law Judge finds that the department has met its burden to show, by a preponderance of the evidence, that the petitioner is a "person responsible" for the child's health or welfare as the guardian for [REDACTED] as a "fictive kin" placement.

A preponderance of evidence is evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it. *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW 789 (1948); CFP, Item 711-4, page 6. A fact finder in an administrative hearing can give probative affect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. *Rentz v General Motors Corp*, 70 Mich 749 (1976). Relevant evidence is evidence having a tendency to make the existence of a fact that is at issue more probable than it would be without the evidence. MCL 722.622(q); CFP, Item 711-4, page 7.

In this case, the department determined that there was a preponderance of evidence establishing that the petitioner was responsible for the alleged abuse of [REDACTED]. The incident occurred before [REDACTED] in the petitioner's home. The department concluded that the petitioner spanked [REDACTED] with a wooden spoon on her left buttock and caused bruising. The petitioner had admitted to using a wooden spoon in the past as physical discipline.

This Administrative Law Judge finds that the preponderance of the evidence does not support that the petitioner physical abused [REDACTED]. Initially, [REDACTED] told the [REDACTED] CPS worker that she got the bruise from falling forward, then clarified that the petitioner hit her with a spoon. However, the bruise on her buttock was not visible when she was taken in for a physical examination on [REDACTED], but the emergency room physician did observe a suspicious bruise on the back of [REDACTED]'s thigh, which was older than a day. In addition, the emergency room physician testified when he saw the pictures, that the bruise could be the result of a fall or a wooden spoon. Since there were two bruises in the photograph, then the bruise would result from something other than a fall. However, the record reflects that allegedly [REDACTED] fell off the chair and on the floor or door of credenza, which could have left two marks.

The family risk assessment (structured decision-making tool) determines the level of risk of future harm to a child. MCL 722.622(z). The form must be completed in all cases other than those involving a non-parent adult who resides outside the child's home [see MCL 722.622(t)] or an owner, operator, volunteer, or employee of a licensed or registered child care organization or a licensed or unlicensed adult foster care family home or adult foster care small group home where there is a preponderance of evidence of abuse or neglect in order to establish the level of risk of future harm to a child. MCL 722.628d(3). The level of risk is based on the highest of the abuse or neglect total risk scores regardless of the type of case investigated; abuse or neglect. The risk levels are low or moderate, Category III; high or intensive, Category II; and Category I, when a court petition is required, or the child's family is a Category II and does not voluntarily participate in services, or a specified crime involving the child was committed. MCL 722.628d; CFP, Item 713-11. Lastly, the department policy sets forth specific, object guidelines for scoring the structured decision-making tool.

On [REDACTED], the CPS conducted a Family Risk Assessment of Abuse/Neglect. The Total Neglect Risk Score was a 2 from a 1 for three or more children in the home and 1 for the Primary Caretaker's Motivation to Improve Parenting Skills. The Total Abuse Risk Score was a 7 for a 1 for a current complaint for abuse, 1 for two or more children in the home, 2 for the primary caretaker employs excessive and/or inappropriate discipline, 2 for the Secondary Caretaker not Motivated to Improve Parenting Skills, and 1 for the Primary Caretaker Views Incident Less Serious than Agency. As a result, the neglect score was low and the abuse score was high. Department Exhibit 21.

This Administrative Law Judge has reviewed the department's scoring, and she does not find each score to be consistent with the credible, documentary evidence and testimony presented, as well as with the department's scoring guidelines as set forth in CFP 713-11. The department incorrectly determined that the family was a high risk for abuse as a Category II case based on the scoring of the Risk Assessment. This Administrative Law agrees with the department score of a 1 for a current complaint for abuse and the 1 for two or more children in the home.

A7. Primary or Secondary Caretaker Employs Excessive and/or Inappropriate Discipline

Either caretaker employs excessive and/or Inappropriate disciplinary practices, particularly methods employed to punish children in the home. Both the circumstances of the current incident and past practices may be considered. One standard is whether caregiver disciplinary practices caused or threatened harm to a child because they were excessively harsh physically or emotionally and/or inappropriate, given the child's age or development. If either or both employ inappropriate and or excessive discipline, (b) should be scored.

- a. **No**
- b. **Yes**

CFP, Item 713-11, p. 11.

However, this Administrative Law Judge disagrees with the department's scoring of a 2 for the primary caretaker employs excessive and/or inappropriate discipline because the petitioner stated during the hearing that she did not use physical discipline of a wooden spoon and a spoonful of vinegar after being informed by the department that they had to abide by the department's policy and consented to not employ physical discipline with the B. children. The preponderance of the evidence does support that [REDACTED] had a bruise on her left buttock as witnessed by the [REDACTED] CPS worker on [REDACTED] and reflected by the pictures taken by the worker on that day. Initially, [REDACTED] told the [REDACTED] CPS worker that she got the bruise from falling forward, then clarified that the petitioner hit her with a spoon. However, the bruise on her buttock was not visible when she taken in for a physical examination on [REDACTED], but the emergency room physician did observe a suspicious bruise on the back of [REDACTED]'s thigh, which was older than a day. In addition, the emergency room physician testified when he saw the pictures that the bruise could be the result of a fall or a wooden spoon. Since there were two bruises in the photograph, then the bruise would result from something other than a fall. However, the record reflects that allegedly [REDACTED] fell on the chair and on the floor or door of credenza, which could have left two marks.

A11. Secondary Caretaker's Motivation to Improve Parenting Skills

The assessment of motivation is based on worker judgement that may be made by observing caretaker response to a tentative service plan and/or other offers of agency assistance made during the investigation. Evaluate the need of the secondary caretaker to improve parenting skills and his/her motivation to do so or there is not a secondary caretaker in the home.

- a. **Yes, or no secondary caretaker in home** – score zero on this item, if there is no need to improve parenting skills, or if there is a need and the secondary caretaker is motivated and able to work with the agency to improve parenting skills. Also score this item, if there is no secondary caretaker in the home; or
- b. **No** – score, if the secondary caretaker needs to improve parenting skills but is not motivated and/or able to work with the agency. CFP, Item 713-11, p. 12.

In addition, the 2 score for the Secondary Caretaker not Motivated to Improve Parenting Skills was incorrect because the record reflects in the on the [REDACTED] Relative/ Fictive Kin/ Guardianship Home Study Outline reflected that the petitioner and her husband employed a wide array of appropriate parenting skills of time outs and the removal of privileges. However, the petitioner and her husband also employed physical discipline of using a wooden spoon when all other forms of discipline failed and a spoonful of vinegar for using bad language, which they agree to stop and follow the department policy of no physical discipline. The record is inconsistent as to whether or not the petitioner still employed physical discipline after the Home Study. However, the petitioner has stated consistently that physical discipline was not used after she was informed by the department and agreed to stop. The petitioner did exercise in error in judgment in not informing the caseworker immediately of the alleged incident when it occurred especially since [REDACTED] received a bruise as a result of the incident.

A12. **Primary Caretaker Views Incident Less Seriously than Agency**

The primary caretaker views the abuse as seriously as CPS does.

- a. **No** – score this item, if the primary caretaker views the substantiated incident of abuse as serious or more serious than agency;

- b. **Yes** – score this item, when there is a clear indication that the primary caretaker views the incident less seriously than the agency by refusing to be involved in service planning for self/children, refusing services and/or minimizing the level of abuse sustained by child. CFP, Item 713-11, pp. 12 and 13.

Furthermore, the department incorrectly scored a 1 for the Primary Caretaker Views Incident Less Serious than Agency. Initially, the petitioner felt that this was a bruise resulting from two children playing on a chair where one fell to the floor. The record reflects that the petitioner offered an explanation as to the bruise on [REDACTED] buttocks and offered to have the CPS caseworker talk to the petitioner's children immediately over the phone to resolve the issue. In addition, the petitioner hired an attorney to protect her interest once she realized the seriousness of the allegation. In addition, the petitioner made her children available to be interviewed as a part of the CPS investigation. This Administrative Law Judge finds that the petitioner did view this incident very seriously. The correct score for the Risk Assessment for Abuse should have been a 2, which would have put the risk level to low.

In conclusion, this Administrative Law Judge finds that the petitioner's Family Risk Assessment of Abuse/Neglect falls under the Category III, low risk level, community services needed. [REDACTED]. was harmed in that she did receive a bruise on her buttocks while in the petitioner's care. Although how [REDACTED]. got the bruise is contested, the fact that a four-year-old sustained a bruise is a concern, which would recommend community services for the petitioner. There is no preponderance of the evidence to establish that the petitioner refused to participate in services to commensurate with the low risk to [REDACTED] was removed from the household by the department on [REDACTED] and was no longer in the petitioner's household.

On [REDACTED], the CPS worker based on her investigation determined that there was a preponderance of evidence to support the allegation that the petitioner spanked [REDACTED] with a wooden spoon and caused bruising on her buttocks. In addition, the Family Risk Assessment scored a high-risk level of abuse and indicated that the case must be opened for CPS services and dispositioned under Category II. The petitioner's name will be placed on Central Registry under physical abuse. This case is further being opened/closed for services, as the petitioner did not wish to participate in services. Department Exhibit 46-48. On [REDACTED], the department substantiated child abuse due to physical injury against the petitioner for [REDACTED] and placed the petitioner's name on Central Registry with a certified notice being sent to the petitioner. Department Exhibit 13-17.

In short, the overwhelming weight of evidence presented does not support the department's child abuse for physical injury substantiation and Central Registry placement on [REDACTED]. Consequently, after a full hearing on the matter, this Administrative Law Judge finds the department's refusal to remove petitioner's name from the Central Registry was not proper. Therefore, the petitioner's name must be expunged as it pertains to the substantiation of abuse arising from the incident in [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, decides that the department incorrectly denied the petitioner's request to have her name expunged from the Central Registry.

Accordingly, the department's decision is **REVERSED**. The department is ordered to remove the petitioner's name from Central Registry as it pertains to the substantiation of abuse, arising from the incident in August 2004.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Marianne Udow, Director
Department of Human Services

Date Signed: December 12, 2006

Date Mailed: December 12, 2006

NOTICE: The law provides that within 60 days of mailing of the above Hearing Decision the Petitioner may appeal it to the circuit court for the county in which he/she resides or has his or her principal place of business in this state, or in the circuit court for Ingham County. Administrative Hearings, on its own motion, or on request of a party within 60 days of the mailing of this Hearing Decision, may order a rehearing.

CGF/tg

cc:

[REDACTED]