

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: 2007-10892
Issue No: 6029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 12, 2007
Berrien 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 Wednesday, September 12, 2007. The claimant personally appeared and testified with [REDACTED], [REDACTED] as a witness.

ISSUE

Whether the department properly denied the petitioner's request for expunction from the Child Abuse and Neglect Central Registry pertaining to allegations of child neglect?

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 [REDACTED], Children's Protective Services (CPS) received a complaint alleging child neglect by the petitioner of her grandson, [REDACTED], date of birth [REDACTED]. Under the allegation, the petitioner, who was the legal guardian and maternal grandmother of [REDACTED], had subjected [REDACTED] to improper supervision by leaving him in [REDACTED] with a

75 year-old woman, [REDACTED] who was [REDACTED] maternal great grandmother, to take care of an 18 month old for extended periods of time when the petitioner lives in [REDACTED]. The complainant states that [REDACTED] walks with a walker and gets around in an electric scooter and cannot take care of an 18 month-old child. [REDACTED] ex-husband drives [REDACTED] around in his car without a car seat. Additionally the biological mother of [REDACTED] who is in foster care, foster care caseworker had spoken to the petitioner about leaving [REDACTED] with [REDACTED] for extended periods of time due to the fact that the biological mother is AWOL and could take [REDACTED] and run off somewhere with him. Department Exhibit 3.

(2) At all times relevant to this matter, petitioner is the legal guardian and the paternal grandmother of [REDACTED], whose date of birth is [REDACTED]. Department Exhibit 3.

(3) On [REDACTED], a petition was filed with [REDACTED] and a [REDACTED] [REDACTED] was issued were [REDACTED] was removed from the home of [REDACTED] in [REDACTED] and placed in foster care. Department Exhibit 9, 12-15.

(4) On October 27, 2006, a preliminary hearing was held regarding the petition that was filed asking for the removal of [REDACTED] from the petitioner. Department Exhibit 10, 16-19.

(5) On December 12, 2006, the department substantiated petitioner for improper supervision as the legal guardian and paternal grandmother of [REDACTED]. There was a concern about the petitioner not using her best judgment in leaving a 19 month-old child with a 76 year-old grandparent who is unable to walk and is in poor health. Furthermore, the petitioner as the legal guardian in not able to place [REDACTED] anywhere without prior permission from the Court. Department Exhibit 11.

(6) On [REDACTED], the department issued a due process letter informing the petitioner that as a result of a complaint on [REDACTED] the petitioner would be identified

on the Central Registry as a person responsible for improper supervision. Department Exhibit Y-Z.

(7) On [REDACTED], an Order of Disposition was granted awarding custody back to the petitioner under the supervision of the department with the following terms and conditions that the petitioner is not to leave the child, [REDACTED], with any improper caregiver at any time.

Department Exhibit A-D.

(8) Subsequently, the department received a request for expunction by the petitioner.

(9) On April 10, 2007, the department reviewed the record and denied the petitioner's request for expunction stating that there was a preponderance of evidence of neglect and a petition was filed where the Family Court adjudicated the allegations with a disposition done with services to reunite the child with the guardian through the foster care program. Department Exhibit F.

(10) On May 30, 2007, the department received a request for a hearing, contesting the department's denial of the petitioner's 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).

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.

The CPS worker's findings as noted in the investigative report were as follows

(Department Exhibit 8-11):

- .. On [REDACTED], the CPS caseworker was advised that during an Adult Protective Services home call that [REDACTED] maternal grandmother, [REDACTED], allegedly assaulted [REDACTED] ex-husband, [REDACTED], who was 83 years old, which resulted in his tooth being knocked out at [REDACTED] home. The physical altercation was a result of fighting over an EBT card and [REDACTED] was present. The maternal grandmother, [REDACTED] also received a black eye from [REDACTED]. in the altercation. The APS caseworker was advised that [REDACTED]. and [REDACTED]. were caring for the 19 month-old [REDACTED]. [REDACTED]. was not an appropriate caregiver because she is 76 years old and is not able to get around taking care of a 19 month old. In addition, [REDACTED]. was also an inappropriate caregiver because her three children were removed from her care.

- .. On [REDACTED], a CPS caseworker in [REDACTED] conducted a home call on the petitioner and found her to be very appropriate. The petitioner stated that she took [REDACTED] to [REDACTED] house on [REDACTED]. The petitioner indicated that she was not aware that she should not or could not allow the child to visit there. She also indicated that she had spoken to the biological mother's foster caseworker, who never told her that she couldn't take [REDACTED]. to [REDACTED] house, but that [REDACTED]. being close to the biological mother was a positive thing so that they could visit often with each other. The petitioner did not have any paperwork from the court or DHS. The petitioner stated that she was not aware of any order of visitation being issued. The petitioner indicated that she was never told that [REDACTED] was not an appropriate person to supervise visits. The petitioner offered to go and get [REDACTED]. immediately if the department felt like she should.

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).

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 neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare which occurs through either of the following:

1. Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care...
2. Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or any other

person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk...

“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.

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 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.

In response to a Category I classification, the department shall do all of the following:

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. MCL 722.628d(2).

“Person Responsible”

A “person responsible for the child’s health or welfare” means

a parent (including a minor parent or noncustodial parent whose parental rights have not been terminated),

legal guardian,

person 18 years of age or older who resides for any length of time in the same household in which the child resides (including foster parents, live-in adult friends of the parent or foster parent, adult siblings and relatives, roomers, boarders, live-in sitters or housekeepers, etc.,

a non-parent adult is a person 18 years of age or older and who, regardless of the person’s domicile, has substantial and regular contact with the child and has a close personal relationship with the child’ parent or with another person responsible for the child’s health or welfare, even though not the child’s parent nor otherwise related to the child by blood or affinity to the third degree (parent, grandparent, great-grandparent, brother, sister, aunt, uncle, niece, nephew);

a person who cares for the child in a licensed or unlicensed day care center, group day care home or family day care home as defined in Section 1 of PA 116 of 1973 or a licensed or unlicensed adult foster care family home or adult foster care small group home as defined in Section 3 of PA 218 of 1979 (see also CFP 716-6 for further clarification.). CFP 711-5, p. 1.

Child Neglect

The Agency is also responsible for investigation of all allegations of child neglect, which is defined in law as harm or threatened harm to the child’s health or welfare by a parent, legal guardian or any other person responsible for the child’s health or welfare. CFP, Item 711-5, p. 4.

Imminent risk means:

The child is in danger of immediate or serious harm. CFP, Item 711-5, p. 4.

Improper Supervision means:

placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child. CFP, Item 711-5, p. 5.

Expunction means deleting the entire referral from Central Registry; it is not the destruction of the local case record. CFP, Item 717-2, page 1.

This Administrative Law Judge finds that the department has met its burden to show, by a preponderance of the evidence, that the petitioner was a "person responsible" for the child's health or welfare as the maternal grandmother and legal guardian of [REDACTED], whose date of birth is [REDACTED]. The definition of neglect requires a showing of harm or threatened harm to a child's welfare by a responsible person which occurs through negligent treatment or placing the child at an unreasonable risk. The first element in this definition requires a showing that the person who is placed on Central Registry is in fact a person responsible for that child's health or welfare. The evidence in this case indicates that the petitioner is the paternal grandmother and legal guardian of [REDACTED], whose date of birth is [REDACTED]. Thus, this element of the definition is met.

The next element of the definition of neglect requires a showing of harm or threatened harm to a child's health or welfare. Specifically, this can take the form of negligent treatment, including the failure to provide medical care, and/or placing a child at an unreasonable risk to the child's health or welfare.

After a careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds the following that regarding the [REDACTED] allegation, the evidence showed that the petitioner did leave [REDACTED] in [REDACTED] care for extensive periods of time who was a 76 year-old woman in poor health and who uses an electric scooter to get around. Although the record was not clear whether or not the petitioner was told not to leave [REDACTED] in [REDACTED]

care is irrelevant, the petitioner, as the legal guardian and maternal grandmother of [REDACTED], was required by the court to take care of [REDACTED], not leave him in another's custodial care for an extended period of time.

The petitioner did not exercise good judgment in placing [REDACTED] in [REDACTED] care for an extended period even though it allowed the biological mother to have visitation. Since the court did not place [REDACTED] in the biological mother's care, the petitioner was responsible for [REDACTED] care and any visitation that she allowed the biological mother to have. There was an altercation between the maternal grandmother, [REDACTED], and [REDACTED] ex-husband over an EBT card. The ex-husband lost a tooth and the maternal grandmother ended up with a black eye. During the altercation, [REDACTED] was present, but was not harmed. However, [REDACTED] could have been harmed during the altercation and should not have been left in this environment which was not appropriate for a 19 month-old child. As a result, relevant and accurate evidence of neglect is shown.

As a result, this Administrative Law Judge finds the petitioner neglected [REDACTED] by putting him in [REDACTED] care for an extended period of time even though [REDACTED] is the maternal great grandmother. As a result, relevant and accurate evidence of neglect is shown. After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds based upon a preponderance of the evidence that the department correctly substantiated child neglect by the petitioner based on the [REDACTED] allegation and correctly placed the petitioner's name on the Central Registry.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, decides that the department properly denied the petitioner's request that her name be expunged from the Child Abuse and Neglect Central Registry.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: December 29, 2008

Date Mailed: December 29, 2008

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

cc:

