

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

DHS Req. No: 2008-00032
SOAHR Docket No. 2008-146 REHD

██████████

Appellant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Department.

ISSUE

Did the Administrative Law Judge properly determine that Petitioner's name must be expunged from the Child Abuse and Neglect Central Registry?

FINDINGS OF FACTS

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

1. On August 13, 2007, ALJ Linda Steadley Schwarb issued a Hearing Decision in which the ALJ reversed the Department of Human Services' (DHS) denial of the Petitioner's request for Expungement (removal) of her name from the Child Abuse and Neglect Central Registry.
2. On October 8, 2007, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services received a Request for Rehearing/Reconsideration submitted by the department.
3. On October 30, 2007, SOAHR granted the department's Request for Reconsideration and issued an Order for Reconsideration.
4. Findings of Fact 1-11 from the Hearing Decision, mailed on August 15, 2007, are hereby incorporated by reference.

5. In a police report dated May 25, 2006,(Department Exhibit #6), the child's teacher indicated that upon his questioning of the child as to how she had been injured, she had said, "her father had hit her".

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.

The department, AHR or, if none, the client may file a written request for rehearing/reconsideration. Request a rehearing/reconsideration when one of the following exists:


Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.

Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion. Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.

Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request. PAM 600.

The Conclusions of Law from the Decision and order, Mailed on August 15, 2007 are incorporated by reference with the following added conclusions of law.

In the present case the Department requested reconsideration alleging misapplication of manual policy or law in the hearing decision which led to a wrong conclusion. This Administrative Law Judge finds that the ALJ properly determined that Petitioner's name should be expunged from the Child Abuse and Neglect Central Registry. The ALJ had substantial evidence which indicated that the Petitioner did not physically abuse the child. There was very little evidence to show that the Petitioner caused the injury to the child's nose. In the Protective Investigation Summary, the Department representative indicated that "when asked about the black eyes. She said her father had done it". The report further states the child had "reported that she thought that her father caused the injuries because she didn't notice the bruises until after her father slapped her". The [REDACTED] report dated [REDACTED] recounts an interview with the child's teacher. The teacher indicated that when he questioned the child regarding her injuries


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the child said “her father had hit her”. In the same police report, an interview with one of the child’s friend was reported. The friend said that the child “told him that her dad had hit her”. Since there is substantial evidence that the child’s father and not Petitioner cause the injuries which are the subject of the child abuse complaint, this Administrative Law Judge finds that ALJ Schwarb correctly found that petitioner did not commit child abuse as defined in the Child Abuse and Neglect Act. Therefore, a finding that petitioner’s name should be removed from the Child Abuse and Neglect Central Registry is in accordance with policy and law.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the Administrative Law Judge was correct when she found that the petitioner did not commit child abuse and found that the department was in error in failing to removed petitioner’s name from the Child Abuse and Neglect Central Registry.


IT IS THEREFORE ORDERED:

That the Administrative Law Judge’s decision mailed August 15, 2007, on the issue of Expungement is AFFIRMED.

/s/

Rhonda Craig
Administrative Law Judge
for Michigan Department of Human Services

Date Signed: August 17, 2009
Date Mailed: August 17, 2009

cc: 

[REDACTED]
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***** NOTICE *****

The Appellant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.