



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

IN THE MATTER OF:

MAHS Docket No.: 16-003394

**Jerome Buchanan,
Petitioner**

Agency Case No.: 7427179

v

**Case Type: Expunction
Expunction**

**Kalamazoo County DHHS,
Respondent**

**Issued and entered
this 6TH day of June, 2016
by: Kevin Scully
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This is a proceeding held pursuant to Section 7 of the Child Protection Law, 1975 PA 238, as amended, MCL 722.621 *et seq.* and in accordance with the Michigan Administrative Procedures Act, 1969 PA 306, as amended (APA), MCL 24.201 *et seq.*

The purpose of this hearing is to determine whether the record of child abuse or child neglect for Jerome Buchanan, Petitioner, should be amended or expunged from the Michigan Child Abuse and Neglect Central Registry (Central Registry) for complaint or referral date of September 18, 2015.

The record reflects that on December 4, 2015, Petitioner submitted a request for amendment or expunction from the Central Registry, and that on March 18, 2016, the Kalamazoo County Department of Health and Human Services, Respondent, denied Petitioner's request.

On March 24, 2016, the Respondent filed a Hearing Summary as request for hearing, dated March 18, 2015, with the Michigan Administrative Hearing System. On April 8, 2016, the Michigan Administrative Hearing System issued a Notice of Hearing scheduling a hearing for June 1, 2016 at 9:30 a.m. in Grand Rapids, Michigan.

The Notice of Hearing was served by mail to the parties at their last known addresses. No request for adjournment was received from either party as to the June 1, 2016, hearing date. The Notice of Hearing mailing was not returned by the post office.

On June 1, 2016, the hearing was held as scheduled in Grand Rapids, Michigan by the undersigned Administrative Law Judge. Pamela Kirkland (Adult Services Supervisor) appeared as an authorized representative on behalf of Respondent. Neither Petitioner, nor an attorney or authorized representative appeared on her behalf, at the hearing. After the undersigned Administrative Law Judge waited over 30 minutes from the scheduled hearing time, the hearing proceeded in Petitioner's absence pursuant to Section 72(1) of the APA and Rule 134 of the Administrative Hearing Rules for the Michigan Administrative Hearing System.

Respondent further moved for a decision by default against Petitioner pursuant to Section 78(2) of the APA, MCL 24.278(2). Sections 72(1) and 78(2) of the APA and Rule 134 state as follows:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.272(1). (Emphasis supplied.)

Sec. 78. (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.278(2). (Emphasis supplied.)

Rule 134. (1) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.

(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings. 2015 Mich Admin Code, R 792.10134. (Emphasis supplied).

Respondent's representative moved for default against Petitioner. Respondent's motion was granted pursuant to Section 78(2) of the APA as to the complaint date of September 18, 2015, at issue.

As a result of the default, the factual and legal allegations contained in Respondent's Hearing Summary dated March 18, 2016, were deemed as true and proven. No witnesses were presented and no exhibits were admitted into the record. The record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The issue presented in this matter is whether Petitioner's name and identifying information should be removed from the Central Registry for complaint or referral date of September 18, 2015. The law applicable to amendment or expunction from the Central Registry is set forth in Section 7 of the Child Protection Law, *supra*, MCL 722.627.

FINDINGS OF FACT

Based on the record as a whole and the default ruling entered against Petitioner, the following findings of fact are established in this matter:

1. Respondent has placed the name of Jerome Buchanan, Petitioner, on the Central Registry for the complaint date of September 18, 2015.
2. The Petitioner did sexually abuse a minor child living in the same household.
3. The Petitioner was placed on the Central Registry as a Category II case with a high risk level based on a discretionary override.
4. Petitioner did not appear and give evidence at hearing to rebut the evidence presented by Petitioner in the Hearing Summary with attachments.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan's Michigan Pleading and Practice 2nd ed.*, Section 60.48, p 230. A default having been granted against Petitioner, the factual and legal allegations set forth in the Hearing Summary are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true and proven. *Smith v Lansing School Dist*, 428 Mich 248; 406 NW2d 825 (1987).

At a hearing such as the present matter, Respondent has the initial burden of going forward with evidence, as well as the burden of proof to establish by a preponderance of evidence that the report of child abuse or child neglect was properly substantiated and categorized under the Child Protection Law, *supra*. Once child abuse or child neglect is initially established, Petitioner must go forward with evidence that the record should be

amended or expunged from the Central Registry on the grounds that the report or record is not relevant or accurate evidence of child abuse or child neglect

The pertinent sections of the APA and administrative rule for Michigan Administrative Hearing System proceedings pertaining to entry of default state as follows:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.272(1).

Sec. 78. (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.278(2). (Emphasis supplied).

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(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings. 2015 Mich Admin Code, R 792.10134. (Emphasis supplied).

Based on the above findings of fact, it is concluded that Respondent has established by a preponderance of the evidence that Petitioner's name on the Central Registry under the Child Protection Law, *supra*, for complaint date of Jerome Buchanan, should not be amended or expunged.

ORDER

NOW THEREFORE, IT IS ORDERED that:

Respondent's denial decision as to Petitioner's placement on the Central Registry for complaint date of Jerome Buchanan, is hereby **AFFIRMED**.



Kevin Scully
Administrative Law Judge

NOTICE: Within 60 days after the date of mailing of this Decision and Order, a Petition for Review may be filed in a court of proper jurisdiction. The Michigan Administrative Hearing System (MAHS), on its own motion or on request of a party, may order rehearing or reconsideration within 60 days after the date of mailing of this Decision and Order.

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 6th day of June, 2016.

Lori A. Smith

Lori Smith

Michigan Administrative Hearing System

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