



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.: 16-014527

██████████
██████████

Agency Case No.: ██████████

v

Case Type: Expunction

████████████████████
██████████

_____ /

**Issued and entered
this 10th day of January, 2017
by:**

████████████████████
Administrative Law Judge

DECISION AND ORDER

PROCEDURAL HISTORY

This proceeding commenced with the issuance of a Notice of Hearing on November 21, 2016, based on notification from the Washtenaw County Department of Health and Human Services (DHHS), Respondent that it would not expunge the name or identifying information of Ms. ██████████, Petitioner, from the Michigan Child Abuse and Neglect Central Registry for referral or complaint date of January 30, 2015. The action concerned Petitioner’s alleged violation of the Child Protection Law, 1975 PA 238, as amended, MCL 722.621 *et seq.* (Act).

On October 14, 2016, the Michigan Administrative Hearing System (MAHS) issued a Notice of Telephone Prehearing Conference informing the parties of a scheduled conference on November 16, 2016.

On November 16, 2016, both parties participated in the telephone prehearing conference.

On November 21, 2016, MAHS issued a Notice of Hearing informing the parties of a scheduled hearing for January 4, 2017.

On December 1, 2016, the undersigned Administrative Law Judge (ALJ), Eric Feldman, issued an Order Following Prehearing Conference.

The hearing commenced as scheduled on January 4, 2017. The undersigned ALJ Eric Feldman presided. Petitioner represented herself at the proceeding and testified at the proceeding. Petitioner also called [REDACTED], Petitioner's sister, to testify as a witness. [REDACTED], Service Specialist; and [REDACTED], Child Protective Services (CPS) Supervisor, appeared and testified on behalf of Respondent.

The record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The issue presented is whether Petitioner's record of abuse or neglect should be amended or expunged from the Child Abuse and Neglect Central Registry (Central Registry) on the grounds that the report or record is not relevant or accurate evidence of abuse or neglect.

Section 2 of the Child Protection Law, *supra*, includes the following relevant definitions and/or applicable statute at the time of the Central Registry placement:

Sec. 2. (f) "Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy. MCL 722.622(f).

Sec. 2. (j) "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 that occurs through either of the following:

- (i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
- (ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or 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. MCL 722.622(j).

Section 7 of the Child Protection Law, *supra*, provides in pertinent part and/or applicable statute at the time of the Central Registry placement:

Sec. 7.

(1) The department shall maintain a statewide, electronic central registry to carry out the intent of this act.

(2) Unless made public as specified information released under section 7d, a written report, document, or photograph filed with the department as provided in this act is a confidential record available only to 1 or more of the following: * * *.

(4) If the department classifies a report of suspected child abuse or child neglect as a central registry case, the department shall maintain a record in the central registry and, within 30 days after the classification, shall notify in writing each person who is named in the record as a perpetrator of the child abuse or child neglect. * * * The notice shall set forth the person's right to request expunction of the record and the right to a hearing if the department refuses the request. * * *.

(5) A person who is the subject of a report or record made under 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 under this act may request the department to expunge from the central registry a report or record by requesting a hearing under subsection (6). * * *. MCL 722.627.

Additionally, there are five dispositions for CPS investigations. Children's Protective Services Manual (PSM) 711-4 (November 2013), p. 5. Category III cases are described as follows:

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 (SDM) tool (risk assessment) indicates a low or moderate risk of future harm to the child. The department **must** assist the child's family in receiving community-based services commensurate with the risk to the child. The person who harmed the child is not listed on central registry. If the family does not voluntarily participate in the services, or fails to make progress in reducing the risk of further harm to the child, the department may reclassify the case as category II if the child's safety indicates a need for CPS intervention.

Exception: If there is a finding of preponderance of evidence of child abuse and/or neglect (CA/N) and the perpetrator is any of the following, the perpetrator must be identified on central registry, even when the SDM risk for the household is determined to be low or moderate:

- Licensed foster parent.
- Nonparent adult who resides outside the child's home.
- Owner, operator, volunteer or employee of a licensed or registered child care organization.
- Owner, operator, volunteer or employee of a licensed or unlicensed adult foster care family home or adult foster care small group home.

PSM 711-4, p. 5.

A nonparent adult is a person 18 years of age or older and who, regardless of the person's domicile, meets all of the following in relation to the child:

- Has substantial and regular contact with the child.
- Has a close personal relationship with the child's parent or with another person responsible for the child's health or welfare.
- Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree (parent, grandparent, great grandparent, brother, sister, aunt, uncle, great aunt, great uncle, niece, nephew).

PSM 711-4, p. 8.

Finally, the Children's Protective Services Manual (PSM) 711-5, Department Responsibilities and Operational Definitions, states that physical abuse (injury) means a nonaccidental¹ occurrence of any of the following:

- Death.
- Deprivation or impairment of any bodily function or part of the anatomy.
- Permanent disfigurement².

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.

- A temporary disfigurement 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.
- Drug or alcohol exposed infants. (See PSM 716-7, Substance Abuse Cases.)
- Burns.
- Scalds.
- Bruises.
- Welts.
- Open wounds.
- Loss of consciousness.
- Adult human bites.
- Provoked animal attacks.

PSM 711-5 (November 2013), pp. 3-4.

RESPONDENT EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A.	A Photo of Child A ³ dated January 30, 2015;
B.	A Notice of Action and Rights Children's Protective Services (CPS) dated February 11, 2015;
C.	A Family Risk Assessment of Abuse/Neglect regarding [REDACTED] dated February 3, 2015;
D.	A Family Risk Assessment of Abuse/Neglect regarding Petitioner, Ms. [REDACTED], dated February 3, 2015; and
E.	Children's Protective Services Investigation Report (Complaint Date: January 30, 2015) (hereinafter referred to as "CPS report").

³ Child's name intentionally removed.

FINDINGS OF FACT

Based upon the entire record in this matter, including the testimony and the exhibits, the following findings of fact are made:

1. Ms. [REDACTED] is the biological mother of Child A (biological son, date of birth: [REDACTED]). Resp. Exh. E, p. 1.
2. Petitioner, [REDACTED], is the sister to [REDACTED]. Resp. Exh. E, p. 1.
3. Petitioner is the maternal aunt to Child A. Resp. Exh. E, p. 1.
4. At the time of the incident, Petitioner and Child A did not reside together.
5. At the time of the incident, Petitioner picked up Child A and Child B (Petitioner's daughter; date of birth [REDACTED]) from school and babysat them. Resp. Exh. E, p. 16.
6. Petitioner's name is presently on the Central Registry, and this placement occurred after a January 2015 investigation. Resp. Exh. E, p. 1.
7. On January 30, 2015, Respondent received a complaint alleging failure to protect and physical abuse by Petitioner. Resp. Exh. E, p. 1.
8. The allegation of the complaint stated that Petitioner hit Child A on January 29, 2015 on his head and stomach because Child A was touching Child B softly on her shoulders. Resp. Exh. E, p. 1.
9. Respondent commenced a prompt, thorough and fair investigation based upon the referral that it received.
10. Respondent determined that a preponderance of evidence was established to support the allegation of physical abuse of Child A by Petitioner. Resp. Exh. E, p. 16.
11. On January 30, 2015, Service Specialist [REDACTED] conducted a forensic interview with Child A at his school and noticed a red mark on his left temple and the left side of his hairline, and took a photo of the marks. Resp. Exh. A, p. 1 and Resp. Exh. E, pp. 7 and 16.
12. On January 30, 2015, [REDACTED] conducted a forensic interview with Child B at her school and documented in the CPS report that Child B acknowledged that her mother, Petitioner, punched Child A in the head. Resp. Exh. E, p. 8.

13. On January 30, 2015, [REDACTED] conducted an interview with [REDACTED] at the [REDACTED] and documented in the CPS report that [REDACTED] acknowledged that her sister, Petitioner, hit Child A with a closed fist. Resp. Exh. E, pp. 8 and 16.
14. On January 30, 2015, [REDACTED] conducted an interview with Petitioner at the [REDACTED] office and documented the following in the CPS report: (i) Petitioner acknowledged that she hit Child A with a closed fist; (ii) Child A was taunting Child B when she picked them up from school; (iii) when they arrived home, Child A wanted to go outside, but Petitioner did not allow him; and (iv) Child A went outside anyways and kept ringing the doorbell and Petitioner grabbed Child A by the coat and hit him on the head. Resp. Exh. E, pp. 9 and 16.
15. On February 12, 2015, a Family Team Meeting was held at the [REDACTED]. Resp. Exh. E, p. 14.
16. As a result of the investigation, Respondent concluded that Petitioner hit Child A with her fist on his head, resulting in a dime sized circular red mark that looks like a "rug burn" above his left temple and he also had a quarter sized red abrasion near his hairline. Resp. Exh. E, pp. 1 and 16.
17. At the culmination of the January 2015 investigation, Respondent determined the case as a Category III, Moderate Risk; and Respondent substantiated Petitioner under the theory of physical abuse. Resp. Exh. D, pp. 1-3 and Resp. Exh. E, p. 16.
18. Respondent placed Petitioner's name on the Central Registry because it determined she met the policy exception under Category III cases in which if there is a finding of preponderance of evidence of CA/N and the perpetrator (Petitioner) is a nonparent adult who resides outside the child home, she must be placed on Central Registry. See PSM 711-4, p. 5 and Resp. Exh. E, p. 16.
19. Petitioner does not meet the policy definition of a nonparent adult because she is related to Child A (Petitioner is aunt to Child A). See PSM 711-4, p. 8.
20. Petitioner's name was improperly placed on the Central Registry because she did not meet the policy exception under Category III cases. See PSM 711-4, pp. 5 and 8.
21. Respondent maintains that the listing at issue was legally and procedurally correct.
22. Petitioner is asking for removal of her name from the Central Registry, and this resulted in the present proceeding.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is on the Respondent to prove, by a preponderance of the evidence, that relevant and accurate evidence of abuse or neglect exists and that the placement of Petitioner's name on the Central Registry was appropriate.

As a trier of fact, the Administrative Law Judge must determine the weight, the effect and the value of the evidence. The Administrative Law Judge must consider and weigh the testimony of all witnesses and evidence.

The protective services hearing process is a quasi-judicial, contested case proceeding required by law to determine if a petitioner's name must remain 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 Respondent has the threshold burden to prove, by a preponderance of the evidence, that a petitioner has committed child abuse and/or child neglect as defined by the Child Protection Law, *supra*. If this threshold burden is met, then the Respondent must also prove that the matter has been properly placed on the Central Registry in conjunction with the provisions of the Child Protection Law, MCL 722.628d.

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 NW2d 789 (1948).

Based on the above findings of fact, Respondent has not proven by a preponderance of the evidence that it was legally appropriate to list Petitioner's name on Michigan's Central Registry.

In the present case, Respondent classified Petitioner's case as a Category III, Moderate Risk; and Respondent substantiated Petitioner under the theory of physical abuse of Child A. Resp. Exh. D, pp. 1-3 and Resp. Exh. E, p. 16. Respondent placed Petitioner's name on the Central Registry because it concluded she met the exception requirement under Category III cases in which if there is a finding of preponderance of evidence of CA/N and the perpetrator (Petitioner) is a nonparent adult who resides outside the child home, she must be placed on Central Registry, even when the SDM risk for the household is determined to be low or moderate. See PSM 711-4, p. 5 and Resp. Exh. E, p. 16. However, the undersigned ALJ disagrees.

In order for Petitioner to meet this exception, she must first fall within CPS's policy definition of "a nonparent adult." The Children's Protective Services Manual (PSM)

defines a nonparent adult as a person 18 years of age or older and who, regardless of the person's domicile, meets all of the following in relation to the child:

- Has substantial and regular contact with the child.
- Has a close personal relationship with the child's parent or with another person responsible for the child's health or welfare.
- Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree (parent, grandparent, great grandparent, brother, sister, aunt, uncle, great aunt, great uncle, niece, nephew).

PSM 711-4, p. 8.

Petitioner must meet all three bullet points above to be considered a nonparent adult. There is no dispute that Petitioner met the requirements of bullet points one and two; however, she did not meet the requirements of the third bullet point. See PSM 711-4, p. 8. The third bullet point states that a nonparent adult "is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree." PSM 711-4, p. 8. But, Petitioner is related to Child A by the affinity to the third degree, she is the aunt to Child A. Resp. Exh. E, p. 1. As such, Petitioner does not meet the policy definition of a nonparent adult because she is related to Child A. See PSM 711-4, p. 8. Therefore, Petitioner's name was improperly placed on the Central Registry because she did not meet the "nonparent adult who resides outside the child's home" listings exception under Category III cases. See PSM 711-4, pp. 5 and 8.

In summary, Category III cases has an exception policy that states if there is a preponderance of evidence of CA/N and the perpetrator is a nonparent adult who lives outside the child's home, the perpetrator must be placed on central registry. See PSM 713-11 (November 2013), p. 3. However, the evidence established that Petitioner does not meet the policy definition of a nonparent adult and therefore, her name should have not been placed on the Central Registry due to not meeting this policy exception. See PSM 711-4, pp. 5 and 8 and PSM 713-11, p. 3.

Accordingly, after reviewing the hearing record in full and applicable law, it is the ruling of the undersigned ALJ that the Petitioner's name was not properly placed on the Central Registry. Therefore, Respondent's refusal to remove Petitioner's name from the Central Registry is reversed.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Petitioner's name, [REDACTED], shall be expunged from the [REDACTED] for referral or complaint date of January 30, 2015.

Accordingly, Respondent's decision is **REVERSED**.

NOW, THEREFORE, IT IS ORDERED that:

1. Respondent expunge Petitioner's name, [REDACTED], from the [REDACTED] [REDACTED] for the complaint or referral date of January 30, 2015, within 10 days of the date of mailing of this Decision and Order.

EF/tm



Eric J. Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

APPEAL NOTICE: Within sixty (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. A written request for rehearing or reconsideration must be filed within sixty (60) days after the date of mailing of this Decision and Order with the Michigan Administrative Hearing System, Cadillac Place, 3038 West Grand Blvd., Suite 3-700, Detroit, MI 48202 (fax 313-456-1619), with a copy to all parties to the proceeding.

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 10th day of January, 2017.

Antonette M. Mehi

Antonette M. Mehi, Legal Secretary
Michigan Administrative Hearing System

[REDACTED]

[REDACTED]

[REDACTED]