



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.: 16-005218

██████████
██████████

Agency Case No.: ██████████

█

Case Type: ██████████

██
Respondent

_____ /

**Issued and entered
this 16th day of February, 2017
by:
Eric J. Feldman
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This proceeding commenced with the issuance of a Notice of Hearing on August 15, 2016, based on notification from the Department of Health and Human Services (DHHS) Children’s Protective Services (CPS) – Maltreatment in Care, Respondent that it would not expunge the name or identifying information of ██████████, Petitioner, from the Michigan Child Abuse and Neglect Central Registry for referral or complaint date of October 27, 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 May 3, 2016, the Michigan Administrative Hearing System (MAHS) issued a Notice of Hearing informing the parties of the scheduled hearing for June 23, 2016.

On June 14, 2016, Respondent filed a Motion for Adjournment.

On June 16, 2016, Administrative Law Judge (ALJ) C. Adam Purnell issued an Order Granting Adjournment.

On June 20, 2016, MAHS issued a Notice of Hearing informing the parties of the rescheduled hearing for July 28, 2016; and the hearing was reassigned to the undersigned, ALJ Eric Feldman.

On June 27, 2016, Petitioner's Counsel, [REDACTED], filed an appearance of Counsel.

On July 22, 2016, Respondent filed a Motion for Adjournment.

On July 28, 2016, the undersigned ALJ issued an Order Granting Adjournment.

On August 11, 2016, Respondent's Counsel, Assistant Attorney General (AAG) [REDACTED] filed an Appearance of Counsel.

On August 15, 2016, MAHS issued a Notice of Hearing informing the parties of the rescheduled hearing for October 5, 2016.

On August 17, 2016, Respondent filed a Notice of Substitution of Attorney that AAG [REDACTED] has been substituted for [REDACTED]

On September 28, 2016, Respondent filed an attached letter with proposed exhibits.

The hearing commenced as scheduled on October 5, 2016.

On October 6, 2016, the undersigned ALJ issued an Order of Continuance and Notice of Hearing informing the parties that the hearing scheduled for October 5, 2016, is continued and would be held on November 16, 2016.

On November 14, 2016, Respondent filed a Motion for Adjournment for the continuance hearing scheduled on November 16, 2016.

On December 5, 2016, the undersigned ALJ issued an Order Granting Adjournment and Rescheduling of Hearing, which informed the parties the continuance hearing would be held on January 18, 2017.

The continuance hearing commenced as scheduled on January 18, 2017.

The undersigned ALJ Eric Feldman presided. Counsel [REDACTED] appeared on behalf of Petitioner. Petitioner [REDACTED] was present. AAG [REDACTED] appeared on behalf of Respondent.

Respondent called the following witnesses to testify:

- 1) [REDACTED], Service Specialist with the [REDACTED] and

2) [REDACTED], Licensing Manager from the [REDACTED] Center.

On January 18, 2017, the record was closed at the conclusion of the hearing.

As a preliminary matter, it was discovered that Petitioner's license to operate a foster home might have been possibly revoked and/or closed. However, the undersigned ALJ will not further address the licensing matter. The issue before the undersigned ALJ is only to address Petitioner's Michigan Child Abuse and Neglect Central Registry listing dated October 27, 2015

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 (hereinafter referred to as "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 the 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 the 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.

Children's Protective Services Manual (PSM) 711-5, Department Responsibilities and Operational Definitions, defines improper supervision as the following:

Placing the child in, or failing to remove the child from, a situation that a reasonable¹ person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in harm or threatened harm to the child.

PSM 711-5 (October 2015) p. 6.

Children's Protective Services Manual (PSM) 711-5, Department Responsibilities and Operational Definitions, defines threatened harm as the following:

A child found in a situation where harm is **likely to occur** based on:

¹ Reasonable: Black's Law Dictionary: being synonymous with rational; equitable; fair, suitable, moderate.

- A current circumstance (e.g., home alone, domestic violence, drug house).
- A historical circumstance (e.g., a history of abuse/neglect, a prior termination of parental rights or a conviction of crimes against children) absent evidence that past issues have been successfully resolved.

Some examples include, but are not limited to:

- A child is home alone.
- Driving under the influence of alcohol and/or illegal substances.
- Drug house.
- Domestic violence.
- New child with prior termination of parental rights.
- Known perpetrator of a crime against a child moving into the home (See PSM 712-6, CPS Intake-Special Cases and PSM 713-08, Special Investigative Situations, Complaints Involving A Known Perpetrator Moving In or Residing With A New Family sections.)

(See PSM 713-08, Special Investigative Situations, Threatened Harm section).

PSM 711-5, pp. 6-7.

Additionally, a risk assessment is required on all assigned investigations with the following exceptions:

* * *

- There is a preponderance of evidence of child abuse and/or neglect (CA/N) and the perpetrator is one of the following:

* * *

- A licensed foster parent. (If a licensed foster parent is also a perpetrator of CA/N on their biological/adoptive children, a risk assessment must be completed and services provided, as required/necessary.)

PSM 713-11 (July 2015), p. 1 and PSM 711-4 (March 2015), p. 5. If services will be provided in any of the situations above, a risk assessment must be completed. PSM 713-11, p. 1.

Cases with:

- A preponderance of evidence of child abuse and/or neglect (CA/N) and intensive or high-risk levels (Category I or II), or with a mandatory or discretionary override, and/or petition to the court, must be opened for ongoing services (CPS or foster care) and perpetrators must be placed on central registry.
- A preponderance of evidence of CA/N and low or moderate risk levels (Category III) must be referred to community-based services commensurate with the risk level and are not to be placed on central registry. Exception: If there is a preponderance of evidence of child abuse and/or neglect and the perpetrator is a nonparent adult who lives outside the child's home or a licensed foster parent, the perpetrator must be placed on central registry. Category III cases may be opened for monitoring and to receive feedback from community-based service providers. See PSM-714-1, Post-Investigative Services for information on Category III cases.
- Initial classification of Category III may be elevated to Category II either through a risk override at the initial assessment or a risk reassessment. If the case is reclassified a Category II, the perpetrator's name must be placed on central registry.
- Initial classification of Category III or Category II must be elevated to Category I if a petition is filed. If the case was initially classified as a Category III, the perpetrator's name must be placed on central registry.
- In Category IV cases, the CPS worker must assist the family in voluntarily participating in community-based services commensurate with the risk level.

PSM 713-11, pp. 2-3.

RESPONDENT EXHIBITS

Exhibit Description

- A. A Children's Protective Services Investigation Report (Complaint Date: October 27, 2015) (hereinafter referred to as "CPS report");
- B. A Family Risk Assessment of Abuse/Neglect (Risk Assessment);

- C. Notice of Action and Rights Children's Protective Services dated October 27, 2015; and
- D. Child Abuse/Neglect Action (DHS-1200) dated March 15, 2016.

PETITIONER EXHIBITS

1. A Special Evaluation Report with a compliant date of February 19, 2015;
2. A Special Evaluation Report with a compliant date of April 29, 2015;
3. An undated photo of Petitioner's closet;
4. An undated photo of Petitioner's closet;
5. An undated photo of Petitioner's closet;
6. An undated photo of Petitioner's basement;
7. An undated photo of Petitioner's basement;
8. An undated photo of the Petitioner's basement/entry to basement;
9. An undated photo of Petitioner's basement/stairs leading to basement; and
10. A May 10, 2015 photo of Child A's² damages to a hospital wall.

SUMMARY OF EVIDENCE

The following is intended as only a brief overview drawn from the evidence presented at the lengthy proceeding conducted on October 5, 2016, and January 18, 2017.

The Central Registry listing stems from a CPS/Respondent investigation that commenced during October 27, 2015. Resp. Exh. A, p. 1. At that time, Petitioner was the foster parent of Child A and Child B³.

The hearing record indicates that Respondent received an October 27, 2015, complaint alleging improper supervision, maltreatment, physical abuse, physical neglect, and threatened harm by Petitioner. Resp. Exh. A, p. 1.

² Child A's name intentionally removed.

³ Child B's name intentionally removed.

The allegations of the complaint reported that Petitioner punished Child A by locking him in the closet in the basement of the home for punishment, and also using a belt to physically discipline him. Resp. Exh. A, p. 5. As a result of the allegations, Respondent conducted interviews of Petitioner, Child A, and Child B.

As a result of the investigation, Respondent concluded the following: (i) Child A is a vulnerable child, as he is in the foster care ward, and has been diagnosed with extensive mental health and behavioral issues; and (ii) Petitioner's inappropriate discipline included locking Child A in a closet or the basement of the home, which he was afraid of, and using physical discipline such as a belt. Resp. Exh. A, p. 21; and PSM 711-5, pp. 6-7.

As a component of its investigation, Respondent completed a Risk Assessment. Resp. Exh. B, pp. 1-5. The Risk Assessment noted a "Total Neglect Risk Score" of "5", correlating to a *High* risk of neglect for Petitioner. Resp. Exh. B, p. 4.

At the culmination of the October 2015 investigation, Respondent determined the case as a Category II, *High Risk*, with a discretionary override, because Respondent was a licensed foster parent; and Respondent substantiated Petitioner under the theory of improper supervision and threatened harm of Child A. Resp. Exh. A, p. 21; Resp. Exh. B, pp. 1-5; and see PSM 713-11, pp. 2-3. This resulted in Petitioner's name being placed on the Central Registry.

Petitioner is requesting removal of her name from the Central Registry, and this resulted in the present proceeding.

On October 5, 2016, Service ██████████ provided testimony as to why the listing at issue was legally and procedurally correct.

On January 18, 2017, Licensing Manager ██████████ provided testimony as to why the listing at issue was legally and procedurally correct.

The following is a summary of the relevant testimony provided at the hearing:

Testimony of Service Specialist Amber Pollina

On October 5, 2016, ██████████ provided testimony as to why it was legally appropriate to list Petitioner's name on the Central Registry.

During direct examination, ██████████ reiterated the findings that were documented in the CPS report. Resp. Exh. A, pp. 1-22. ██████████ testified that she conducted forensic interviews of Child A and Child B regarding the allegations. ██████████ testified that ██████████ was present during the children's interviews. ██████████ testified that during the forensic interview of Child B, she confirmed the allegations that Child A was placed in the closet for punishment, he would be placed in the basement of the

home for punishment, and he was physically disciplined. ██████ testified that Child B stated that she previously denied the allegations because at the time she was in the home, she was threatened by Petitioner. ██████ testified that during the forensic interview of Child A, he confirmed the allegations with regard to being physically disciplined with a belt, that made his arm bleed and that he was locked in the closet and the basement for discipline. ██████ testified that she interviewed Petitioner, who denied all the allegations. ██████ indicated that she did a follow-up interview of Child B because she stated she had told Petitioner's mother, ██████, about the allegations and that she had went to Petitioner mother's apartment previously and was able to identify the exact location of the mother's apartment, despite Petitioner stating the children had no contact with her. ██████ testified she went to the home of Petitioner's mother and confirmed it was the exact location that Child B reported. Ms. ██████ also went through the scoring of the Risk Assessment. Finally, ██████ testified as to why she substantiated Petitioner under the theory of improper supervision and threatened harm of Child A.

During cross-examination of ██████, Petitioner's Counsel questioned ██████ about the investigation conducted. Petitioner's Counsel questioned Ms. ██████ about why Child B kept contacting Petitioner, despite Child B stating she felt threatened by Petitioner. Petitioner's Counsel questioned Child B's allegations and found it strange that Child B was open to talking during her forensic interviews. Petitioner's Counsel questioned Ms. ██████ about how the same exact allegations occurred on April 29, 2015 and they were found to be unsubstantiated. Resp. Exh. A, p. 2 and Pet. Exh. 2, pp. 1-15. Petitioner's Counsel then asked ██████ about Petitioner's home, including how there is no basement door, so how Child A could be secluded and that the closet was not a walk-in. Petitioner's Counsel argued that Child A was physical due to his medical conditions, so how could he even be confined in the closet or basement due to his physical nature.

Petitioner's Counsel then questioned Ms. ██████ about Child A's forensic interview. Petitioner's Counsel argued that her impression is that Child A did not want to do the interview and that he just confirmed all the allegations because he wanted to end the interview.

Testimony of Licensing Manager James Hutchinson

On January 18, 2017, Mr. ██████ provided testimony as to why it was legally appropriate to list Petitioner's name on the Central Registry.

████████ reiterated much of the similar testimony that Ms. ██████ provided. Mr. ██████ testified that he was present during the children's forensic interviews and confirmed the allegations. ██████ testified that Child A stayed with Petitioner from ██████ to ██████, he was then hospitalized, and came back to stay with Petitioner from ██████ to ██████. ██████ testified that Child B stayed with Petitioner from ██████ to ██████.

During cross-examination of [REDACTED], Petitioner's Counsel questioned Mr. [REDACTED] that prior to the complaint, Petitioner requested numerous times for Child B to be removed from her home because there were concerns about Child B and from Child B's family. Petitioner's Counsel then introduced as an exhibit a Special Evaluation Report dated [REDACTED], which stated how Child B said there was nothing negative about Petitioner and there were no problems in the home. Pet. Exh. 1, pp. 1-7. Petitioner's Counsel then introduced as an exhibit a Special Evaluation Report dated [REDACTED], which contained the same exact allegations as in the present case and nothing was found to be unsubstantiated. Pet. Exh. 2, pp. 1-15. Petitioner's Counsel went through the report to show how both children denied any of the similar allegations, how they felt safe to live with Petitioner, how they had positive things to say about Petitioner, and how Petitioner was told she was not "firm" enough against the children for discipline. See Pet. Exh. 2, pp. 1-15.

Petitioner's Counsel also discussed the photos of the closets in the home and the basement to show how Child A could not have been locked in the closet and basement. Pet. Exh. 3-9. Petitioner's Counsel also introduced a photo of a hospital wall that shows damage to it done by Child A and argued how could Child A be allegedly locked in a closet/basement at Petitioner's home and there was no damage. Pet. Exh. 10, p. 1.

Petitioner's Counsel also argued how the allegations were months after the children were removed, CPS/Respondent did not pursue Child B allegations, there was pressure on Petitioner from Wayne Center, there were no marks or bruises on the children, Mr. [REDACTED] showed how he did not believe Child B's statements, Child A's interview, which lasted 45-60 minutes, was improperly done and he would admit to any of the allegations due to the length of the interview; and therefore, Respondent failed its burden of showing that Petitioner committed child abuse and/or neglect.

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. Petitioner was the foster parent of Child A [REDACTED]-years-old; DOB: [REDACTED] [REDACTED]) and Child B ([REDACTED]-years-old; DOB: [REDACTED]). Resp. Exh. A, p. 1.
2. At the time of the incident, Petitioner, Child A, and Child B, all resided together.
3. Child A stayed with Petitioner from [REDACTED] to [REDACTED], he was then hospitalized, and came back to stay with Petitioner from [REDACTED] to [REDACTED].
4. Child B stayed with Petitioner from [REDACTED] to [REDACTED].

5. Child A and Child B no longer reside with Petitioner or with one another.
6. Child A has been diagnosed with extensive mental health and behavioral issues. Resp. Exh. A, p. 21.
7. Petitioner's name is presently on the Central Registry, and this placement occurred after an October 2015 investigation. Resp. Exh. A, p. 1.
8. On October 27, 2015, Respondent received a complaint alleging improper supervision, maltreatment, physical abuse, physical neglect, and threatened harm by Petitioner. Resp. Exh. A, p. 1.
9. The allegations of the complaint initially reported child abuse and/or neglect of Child B by Petitioner. Resp. Exh. A, pp. 1-2.
10. The allegations of the complaint further reported that Petitioner punished Child A on unspecified dates by locking him in the closet in the basement of the home for punishment, and also using a belt to physically discipline him. Resp. Exh. A, p. 5.
11. Respondent commenced a prompt, thorough and fair investigation based upon the referral that it received.
12. Respondent determined that a preponderance of evidence was established to support the allegations of improper supervision and threatened harm of Child A by Petitioner. Resp. Exh. A, p. 1.
13. As a result of the allegations, interviews were conducted with the children.
14. On [REDACTED], [REDACTED] from CPS and [REDACTED] from [REDACTED] conducted a joint forensic interview of Child B at her high school in which the following was reported by Child B: (i) she confirmed the allegations that Child A was placed in the closet for punishment, he would be placed in the basement of the home for punishment, and he was physically disciplined; (ii) she previously denied the allegations because she was still in the home and she was fearful of Petitioner; (iii) she stated Petitioner told her that if her placement did not work, she would go to an all girls' home instead; and (iv) Petitioner's mother, [REDACTED], would be able to confirm these allegations as Child B had disclosed it to her while Ms. [REDACTED] babysat her. Resp. Exh. A, pp. 8-10 and 21.
15. On [REDACTED], [REDACTED] and [REDACTED] conducted a joint forensic interview of Child A at his school in which the following was reported by Child A: (i) he confirmed the allegations with regard to being physically

- disciplined with a belt, that made his arm bleed; and (ii) that he was locked in the closet and the basement for discipline. Resp. Exh. A, pp. 10-11 and 21.
16. On [REDACTED], [REDACTED] conducted an interview of Petitioner at her residence in which the following was reported by Petitioner: (i) she denied all of the allegations; (ii) the children never had any contact with her mother, Ms. [REDACTED]; (iii) she reported Child B did not want to leave her home and came back to visit; and (iv) she reported Child A has behavioral issues. Resp. Exh. A, pp. 12-14 and 21.
 17. During Petitioner's home visit, Ms. [REDACTED] viewed the entire residence, including the unfinished basement. Resp. Exh. A, p.13.
 18. On [REDACTED], [REDACTED] conducted a follow-up forensic interview of Child B at her high school. Child B stated she had went to Petitioner mother's apartment previously and was able to identify the exact location of Petitioner mother's apartment, despite Petitioner stating the children had no contact with her. Resp. Exh. A, pp. 16 and 21.
 19. On [REDACTED], [REDACTED] went to the home of Petitioner's mother and confirmed it was the exact location that Child B reported. Resp. Exh. A, pp. 17 and 21.
 20. As a result of the investigation, Respondent concluded the following: (i) Child A is a vulnerable child, as he is in the foster care ward, and has been diagnosed with extensive mental health and behavioral issues; and (ii) Petitioner's inappropriate discipline included locking Child A in a closet or the basement of the home, which he was afraid of, and using physical discipline such as a belt. Resp. Exh. A, p. 21; and PSM 711-5, pp. 6-7.
 21. As a component of its investigation, Respondent completed a Risk Assessment. Resp. Exh. B, pp. 1-5. The Risk Assessment noted a "Total Neglect Risk Score" of "5", correlating to a *High* risk of neglect for Petitioner. Resp. Exh. B, p. 4.
 22. At the culmination of the October 2015 investigation, Respondent determined the case as a Category II, *High Risk*, with a discretionary override, because Respondent was a licensed foster parent; and Respondent substantiated Petitioner under the theory of improper supervision and threatened harm of Child A. Resp. Exh. A, p. 21; Resp. Exh. B, pp. 1-5; and see PSM 713-11, pp. 2-3.
 23. As noted, this resulted in Petitioner's name being placed on the Central Registry.

24. Petitioner is asking for removal of her name from the Central Registry and disputed the Respondent's actions.

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).

The present matter is a difficult one. However, Central Registry placement is evaluated in terms of the legal circumstances present at the time of the listing. After significant reflection and a thorough review of the record, the evidence presented supports the fact that Respondent acted appropriately at the time of the October 2015 listing based upon the law and guidelines which govern the situation. The undersigned ALJ finds that a preponderance of evidence was established to support the allegations of improper supervision and threatened harm.

Improper supervision is defined as “[p]lacing the child in, or failing to remove the child from, a situation that a reasonable⁴ person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in harm or threatened harm to the child.” PSM 711-5, p. 6. The evidence record

⁴ Reasonable: Black's Law Dictionary: being synonymous with rational; equitable; fair, suitable, moderate.

demonstrates that Child A, a vulnerable child who has been diagnosed with extensive mental health and behavioral issues, was inappropriately disciplined by Petitioner when she locked him in a closet or the basement of the home, which he was afraid of. Resp. Exh. A, p. 21. Respondent's witnesses, [REDACTED], credibly testified that Child A and Child B provided each of them with similar statements made during their forensic interviews regarding Petitioner's inappropriate discipline of Child A. Resp. Exh. A, pp. 8-11 and 21. Both Child A and Child B were separately interviewed, have no relation to one another, they had no contact with one another since being removed from Petitioner's home, yet they both provided similar statements months after they left to Respondent's witnesses about the same inappropriate discipline by Petitioner. The undersigned ALJ finds such similar statements by the children, including the witnesses' credible testimony, sufficient to establish by a preponderance of evidence that Petitioner did lock Child A in a closet and the basement as a form of punishment. As such, Respondent properly determined that Petitioner's actions fell under the theory of improper supervision. See PSM 711-5, p. 6.

Furthermore, the definition of threatened harm includes "[a] child found in a situation where harm is likely to occur based on a current circumstance... or a historical circumstance absent evidence that past issues have been successfully resolved. PSM 711-5, pp. 6-7. Again, the evidence record demonstrates that Petitioner locked Child A in a closet or the basement of the home as a form of discipline based on the credible testimony of Respondent's witnesses as well as the similar statements made by the children during their separate forensic interviews. Exh. A, pp. 8-11 and 21. Thus, the undersigned ALJ finds there was a preponderance of evidence to establish that Petitioner's actions fell under the theory of threatened harm. See PSM 711-5, pp. 6-7.

Regarding the risk assessment and the culmination of the October 2015 investigation, the undersigned ALJ finds that Respondent properly determined the case as a Category II, *High Risk*, with a discretionary override, because Respondent was a licensed foster parent. Resp. Exh. A, p. 21; Resp. Exh. B, pp. 1-5; and see PSM 713-11, pp. 1-3; and PSM 711-4, p. 5.

Based on the totality of the hearing record, the undersigned ALJ finds that Respondent properly determined that a preponderance of evidence was established to support the allegations of improper supervision and threatened harm of Child A by Petitioner. Because Respondent has proven by a preponderance of the evidence that Petitioner has committed child abuse and/or neglect, Respondent also proved that the matter had been properly placed on the Central Registry based on Petitioner being substantiated as a Category II, High Risk. See PSM 713-11, pp. 1-3 and MCL 722.628d.

Accordingly, after reviewing the hearing record in full and applicable law, it is the ruling of this ALJ that the Petitioner's name was properly placed on the Central Registry. Therefore, Respondent's refusal to remove Petitioner's name from the Central Registry is upheld.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Petitioner, [REDACTED], name shall not be expunged from the Child Abuse and Neglect Central Registry for referral or complaint date of October 27, 2015.

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

EJF/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 16th day of February, 2017.

Antonette M. Mehi

Antonette M. Mehi
Michigan Administrative Hearing System

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]