



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:

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██████████

MAHS Docket No.: 16-014876

Agency Case No.: ██████████

Case Type: ██████████

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**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 November 23, 2016, based on notification from the ██████████ County Department of Health and Human Services (DHHS), 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 April 11, 2016. 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 20, 2016, the Michigan Administrative Hearing System (MAHS) issued a Notice of Telephone Prehearing Conference informing the parties of a scheduled conference on November 21, 2016.

On November 21, 2016, both parties participated in the telephone prehearing conference.

On November 23, 2016, MAHS issued a Notice of Hearing informing the parties of a scheduled hearing for January 4, 2017.

On November 28, 2016, Petitioner submitted his proposed witness list.

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

On December 6, 2016, Respondent submitted its proposed exhibit list.

The hearing commenced as scheduled on January 4, 2017. The undersigned ALJ Eric Feldman presided. Petitioner, [REDACTED] represented himself at the proceeding and testified at the proceeding. Petitioner also called [REDACTED], Petitioner's [REDACTED] to testify as a witness. Mr. [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. (g) "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(g).

Sec. 2. (k) "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(k).

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, a risk assessment is required on all assigned investigations, other than the exceptions listed in the manual. See Children Protective Services Manual (PSM) 713-11 (July 2015), p. 1. The risk assessment determines the level of risk of future harm to the children in the family. PSM 713-11, p. 2.

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.

Overrides to risk levels have been established to ensure that the level of risk for a case accurately reflects the risk level for the children. PSM 713-11, p. 3. The two types of overrides to the risk level are mandatory and discretionary overrides. PSM 713-11, p. 3.

Mandatory Overrides. Each time a risk assessment is completed, the mandatory override reasons must be reviewed to determine if any apply to the case. PSM 713-11, p. 3. The mandatory overrides listed below require that the risk level for the family be scored as intensive, regardless of the initial risk level. PSM 713-11, p. 3. These cases must be served according to the contact standards required for intensive risk cases. PSM 713-11, p. 3. Even if the initial risk level scores at intensive, the mandatory override reason must be identified on Michigan Statewide Automated Child Welfare Information System (MiSACWIS). PSM 713-11, p. 3. The following are mandatory overrides:

- Sexual abuse cases in which the perpetrator is likely to have access to the child victim.

- Cases with non-accidental physical injury to an infant. **Exception:** A drug-or alcohol-exposed infant, without indication from the medical practitioner that there was an injury to the child due to the drug or alcohol exposure, does not require a mandatory override.
- *Severe, non-accidental, physical injury requiring medical treatment or hospitalization and that seriously impairs the child's health or physical well-being.*
- Death (previous or current) of a child/sibling as a result of abuse or neglect.

PSM 713-11, pp. 3-4 (emphasis added) and see MCL 722.628(3)(c) (definition of "severe physical injury").

Discretionary Overrides. Each time a risk assessment is completed, evaluate the need for a discretionary override. PSM 713-11, p. 4. A discretionary override is applied by the worker to increase the risk level in any case in which the worker determines that the risk level set by the risk assessment is too low. PSM 713-11, p. 4. This may occur when the worker is aware of conditions affecting risk that are not captured within the items on the risk assessment and/or there are unique circumstances in the family that increases risk. PSM 713-11, p. 4. At initial assessment of risk, discretionary overrides must have supervisory approval and may only be used to increase the risk level by one risk level. PSM 713-11, p. 4.

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.
- A temporary disfigurement which requires medical intervention or which occurs on a repetitive basis.
- Brain damage.
- Skull or bone fracture.

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.

- 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 (October 2015), pp. 3-4.

RESPONDENT EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A.	Children’s Protective Services Investigation Report (Complaint Date: April 11, 2016) (hereinafter referred to as “CPS report”);
B.	Child A’s ³ Hospitalization / Medical Records (hereinafter referred to as “medical records”);
C.	A [REDACTED] dated [REDACTED] (hereinafter referred to as “police report”);
D.	Original - Family Risk Assessment of Abuse/Neglect regarding Petitioner;
E.	An Updated Family Risk Assessment of Abuse/Neglect regarding Petitioner dated August 24, 2016;
F.	Original – Safety Assessment regarding Petitioner;
G.	An Updated Safety Assessment regarding Petitioner dated August 24, 2016;

³ Child A’s name intentionally removed.

- H. A Petition dated April 22, 2016, from the [REDACTED] [REDACTED] [REDACTED] [REDACTED] – Family Division (hereinafter referred to as [REDACTED] and [REDACTED])
- I. An e-mail dated April 25, 2016, from [REDACTED] from the [REDACTED] [REDACTED].

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 is the biological father of Child A (biological son, date of birth: [REDACTED] [REDACTED]). Resp. Exh. A, p. 1.
2. [REDACTED] is the step-mother to Child A.
3. At the time of the incident, Petitioner, Child A, and [REDACTED] all resided together.
4. Petitioner's name is presently on the Central Registry, and this placement occurred after an April 2016 investigation. Resp. Exh. A, p. 1.
5. On April 11, 2016, Respondent received a complaint alleging physical abuse by Petitioner. Resp. Exh. A, p. 2.
6. The allegation of the complaint stated that Petitioner reported that Child A threatened to stab Petitioner and Petitioner was in an altercation with Child A, which led to Child A needing a cast and stitches. Resp. Exh. A, p. 2.
7. Respondent commenced a prompt, thorough and fair investigation based upon the referral that it received.
8. Respondent determined that a preponderance of evidence was established to support the allegation of physical abuse of Child A by Petitioner. Resp. Exh. A, p. 16.
9. On April 2, 2016, an altercation occurred between Child A and his father, Petitioner, which resulted in Child A receiving physical injuries and requiring hospitalization. Resp. Exh. A, p. 16 and Resp. Exh. C, pp. 1-10.

10. During the physical altercation, Child A was hit with a “tire iron” or “tire rod” by Petitioner, which was described in the police report as “a black folding tire jack.”⁴ Resp. Exh. A, pp. 1-16 and Resp. Exh. C, p. 6.
11. On April 12, 2016, a CPS Specialist conducted a forensic interview with Child A, in which the following was documented in the CPS report: (i) Child A reported he threatened to stab Petitioner (before the altercation); (ii) Petitioner confronted Child A; and (iii) Petitioner was armed with a jack handle and an altercation ensued. Resp. Exh. A, pp. 8, 10, and 16.
12. On April 12, 2016, a CPS Specialist conducted an interview with [REDACTED] (Child A’s mother) in which she reported that she was not present during the altercation; however, from speaking to Child A and Petitioner, she learned Petitioner confronted Child A about the threat to stab him, Child A reached/lunged at Petitioner, and Petitioner protected himself with the jack handle. Resp. Exh. A, pp. 8-10 and 16; and Resp. Exh. H, p. 1.
13. On April 18, 2016, a CPS Specialist conducted an interview with Petitioner at his home in which he reported that he confronted Child A about Child A saying that he would stab him (Petitioner), Child A got up and starting punching Petitioner, but Petitioner did not report the use of a jack handle during the altercation to the CPS Specialist. Resp. Exh. A, pp. 12-13 and 16.
14. The police report indicated that Petitioner entered Child A’s room with a jack handle in his rear pocket, to confront Child A about comments that he had made, including a knife Child A allegedly reported to have and about being able to get a gun from a friend. Resp. Exh. A, p. 16 and Resp. Exh. C, p. 6.
15. The police report further stated the following: (i) once Petitioner was in the room to confront Child A about his comments, Petitioner got very close to Child A to close any gap and control Child A if there was an attempt of an attack; (ii) Petitioner asked Child A about a knife to which Child A stated it was in the kitchen; (iii) while Child A made this comment, he lunged at Petitioner in an attempt to get past him and to the door way; (iv) Child A did not have a weapon and Petitioner admitted that he did not see Child A reach for any items; (v) during the lunge, Child A reached around Petitioner and Petitioner took the jack handle from his back pocket and started to hit Child A in the arms and legs several times; (vi) Child A then punched Petitioner several times, resulting in injury to Petitioner; (vii) Child A was also hit on the head with the jack handle; (viii) the fight ensued to the hallway to which [REDACTED]

⁴ The object that Child A was hit with was referenced as a “tire iron,” “tire rod,” “tire jack,” or “a jack handle.” Resp. Exh. A, pp. 9, 13, and 16; Resp. Exh. C, p. 6; and Resp. Exh. G, p. 1. Both parties agreed that the object resembled a “jack handle” for newer model cars, hollow on one end and flexible unit on the other end, and a foot to a foot and a half in length. Thus, for purposes of this hearing, the undersigned ALJ will refer to the object hereinafter as a “jack handle.”

- ██████████ called the police; and (ix) ultimately, Petitioner was arrested “due to the use of the weapon,” but the prosecution declined charges against Petitioner. Resp. Exh. C, pp. 6 - 9.
16. As a result of the altercation, Child A received physical injuries described by the medical records as Child A having lacerations of multiple sites, which required numerous staples, and an open fracture of shaft of the left ulna. Resp. Exh. B, pp. 9-10.
 17. On April 22, 2016, a petition was filed with ██████████, but the petition was not authorized because it did not allege that Child A was found or that abuse occurred in ██████████. Resp. Exh. H, pp. 1-3 and Resp. Exh. I, p. 1.
 18. At the culmination of the April 2016 investigation, Respondent determined the case as a Category II, but a mandatory override was required to make the case level as *Intensive Risk* because Child A suffered a severe injury; and Respondent substantiated Petitioner under the theory of physical abuse of Child A. Resp. Exh. A, p. 16; Resp. Exh. D, pp. 1-3; Resp. Exh. E, p. 1; and see PSM 713-11, pp. 3-4
 19. Per the credible testimony of Mr. ██████████, Petitioner had alternatives means available to him to de-escalate the situation, such as calling the police, but instead, walked into the room that only escalated the situation.
 20. Per the credible testimony of ██████████ and the evidence record, Child A had no weapon and attempted to leave the room, but instead, an altercation ensued and Child A was hit several times by Petitioner with a jack handle. Resp. Exh. A, pp. 1-16 and Resp. Exh. C, pp. 1-10.
 21. As a result of Petitioner’s action, Child A suffered severe, non-accidental, physical injuries requiring medical treatment or hospitalization and that it seriously impaired Child A’s health or physical well-being. Resp. Exh. A, pp. 1-16; Resp. Exh. B, pp. 1-19; Resp. Exh. C, pp. 1-10; Resp. Exh. D., pp. 1-3; see PSM 711-5, pp. 3-4 and PSM 713-11, pp. 3-4; and see MCL 722.628(3)(c).
 22. As noted, this resulted in Petitioner’s name being placed on the Central Registry.
 23. Petitioner is asking for removal of his name from the Central Registry and this resulted in the present proceeding.
 24. Respondent maintains that the listings at issue were legally and procedurally correct.

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 proven by a preponderance of the evidence that it was legally appropriate to list Petitioner's name on the Central Registry.

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 Child Protective Services acted appropriately at the time of the April 2016 listing based upon the law and guidelines which govern the situation.

At the hearing, Petitioner and [REDACTED] argued and/or made the following assertions: (i) Child A was beset by problems and conflicts and Petitioner was a parent who loved his son, Child A, and was attempting his best to safeguard Child A from harm/imminent danger; (ii) on the morning of the incident, Petitioner and others spoke to Child A at their residence about him dropping out of school, a minor argument occurred and Child A left the home; (iii) Petitioner also left to go to church and later he learned that Child A was on drugs and threatened to cut his throat with a knife; (iv) before

coming home, Petitioner testified that he stopped by the police station to alert the police of Child A's threats and was asked by the police if he wanted to be escorted home, but he declined; (v) upon Petitioner's return home, he learned that Child A returned to their home and Petitioner grabbed a jack handle and put in his back pocket for protection due to Child A's threats of a weapon; (vi) Petitioner entered Child A's room and asked where the knife was located, but then Child A reached for the dresser and Petitioner thought Child A was reaching for the knife, so he hit him with the jack handle due to self-defense, and the fight ensued; (vii) Petitioner ultimately claims self-defense and that he was protecting himself; and (viii) Petitioner, [REDACTED] emphasized that Child A had serious problems and that they were attempting their best to raise Child A so that he would not be harmed by his surroundings.

In response, [REDACTED] did not doubt that Petitioner and [REDACTED] were attempting their best to raise Child A and that Child A had serious problems. However, Mr. [REDACTED] argued that Petitioner had alternatives means available to him to de-escalate the situation, such as calling the police, but instead, walked into the room with a jack handle that only escalated the situation. Mr. [REDACTED] claimed that Petitioner was the adult in this situation and because of Petitioner's actions of bringing a weapon into the situation, there was an intent to cause harm.

The undersigned ALJ agrees with Respondent's argument. In the present case, the undersigned ALJ does not doubt that Petitioner cares for Child A and that Child A was beset with many problems. However, Respondent established by preponderance of evidence to support the allegation of physical abuse of Child A by Petitioner. The undersigned ALJ does not find Petitioner's argument credible that he acted in self-defense because the use of a jack handle to strike Child A was inappropriate. Instead, Petitioner should have avoided this confrontation altogether. The undersigned ALJ finds Mr. [REDACTED] argument credible that Petitioner had alternatives means available to him to de-escalate the situation, such as calling the police, but instead, walked into the room with a jack handle that only escalated the situation. In fact, Petitioner acknowledged that he had gone to the police station earlier to forewarn the police of Child A's threats, but yet, declined assistance from the police. If Petitioner felt threatened by Child A's treats, including a possible weapon, he would have accepted the police assistance.

Furthermore, the undersigned ALJ finds that Petitioner bringing a jack handle into an already heightened situation, would increase the chances that physical abuse (injury) could incur, which in fact, it did. As supported by the police report, the undersigned ALJ finds Child A's story of the incident credible that when he was first attempted to leave the room, he was struck by Petitioner with the jack handle. Resp. Exh. C, p. 6; and Resp. Exh. G, p. 1. As a result of the altercation, Child A received lacerations of multiple sites, which required numerous staples, and a fractured left ulna. Resp. Exh. B, pp. 9-10. These actions by Petitioner falls within CPS's definition of physical abuse (injury). See PSM 711-5, pp. 3-4 and PSM 713-11, pp. 3-4.

Likewise, Respondent claimed that not only did Child A suffer physical abuse (injury), but severe physical injury, resulting in a mandatory override that raised the case disposition to an *Intensive Risk*. Resp. Exh. A, p. 16 and PSM 713-11, pp. 3-4. The undersigned ALJ again agrees with Respondent's assessment that Child A experienced severe physical injury because Child A received hospitalization due to a fractured left ulna and multiple lacerations requiring numerous staples as a result of Petitioner's actions. See Resp. Exh. B, pp. 1-19. These conducts by Petitioner fell within CPS's definition of severe physical injury because Child A suffered severe, non-accidental, physical injuries requiring medical treatment or hospitalization and that it seriously impaired Child A's health or physical well-being. Resp. Exh. A, pp. 1-16; Resp. Exh. B, pp. 1-19; Resp. Exh. C, pp. 1-10; Resp. Exh. D., pp. 1-3; see PSM 711-5, pp. 3-7 (severe physical abuse definition); see PSM 713-11, pp. 3-4; and see MCL 722.628(3)(c).

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 physical abuse. Additionally, Respondent determined the case as a Category II, but a mandatory override was required to make the case level as *Intensive Risk* because Child A suffered a severe physical injury, which resulted in Respondent properly placing Petitioner on the Central Registry. See PSM 713-11, pp. 3-4


Accordingly, it is the ruling of the ALJ that Petitioner's name was properly placed on the Central Registry during the April 2016 CPS investigation. 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's [REDACTED], shall not be expunged from the Child Abuse and Neglect Central Registry for referral or complaint date of [REDACTED]

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

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