



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.: [REDACTED]

[REDACTED]
[REDACTED]

Agency Case No.: [REDACTED]

v

Case Type: [REDACTED]

[REDACTED]
[REDACTED]

_____ /

**Issued and entered
this [REDACTED] day of [REDACTED]
by: [REDACTED]
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This proceeding commenced with the issuance of a Notice of Hearing on March 17, 2017 following Respondent [REDACTED] County Department of Health and Human Services' notices to Petitioner [REDACTED] that it would not expunge her name or identifying information from the Michigan Child Abuse and Neglect Central Registry for referral or complaint dates of [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]

[REDACTED] The action concerned Petitioner's alleged violation of the Child Protection Law, 1975 PA 238, as amended, MCL 722.621 *et seq.* (Act).

The hearing was held as scheduled on [REDACTED]. Petitioner represented herself at the proceeding. Petitioner testified on her own behalf and also called [REDACTED], her great-grandmother; [REDACTED], foster care worker; her husband [REDACTED] and her children, Child A (female, born [REDACTED]), Child B (female, born [REDACTED]), Child C (female, [REDACTED]), Child D (male, born [REDACTED]), Child E (male, born [REDACTED]), as her witnesses. [REDACTED], Child Protective Services (CPS) Supervisor, represented Respondent. [REDACTED], CPS Specialist, testified on behalf of Respondent. There were no additional witnesses at the proceeding.

SUMMARY OF EXHIBITS

RESPONDENT EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Central Registry Expungement Request, received by Respondent [REDACTED]
B	Child Abuse/Neglect Action notices denying expunction requests, dated [REDACTED]
C	Hearing Summary, dated [REDACTED]
D1	CPS Investigation Report, complaint date [REDACTED]
D2	Safety Assessment, dated [REDACTED]
D3	Risk Assessment, dated [REDACTED]
D4	Petition, Child Protective Proceedings, signed [REDACTED]
D5	Order After Preliminary Hearing, dated [REDACTED] and Order of Adjudication, dated [REDACTED]
E1	CPS Investigation Report, complaint date [REDACTED]
E2	Safety Assessment, dated [REDACTED]
E3	Risk Assessment, dated [REDACTED]
E4	Supplemental Petition, Child Protective Proceedings, signed [REDACTED] [REDACTED]
E5	Order After Preliminary Hearing, dated [REDACTED]
F1	CPS Investigation Report, complaint date [REDACTED]
F2	Safety Assessment, dated [REDACTED]
F3	Risk Assessment, dated [REDACTED]
F4	Supplemental Petition, Child Protective Proceedings, signed [REDACTED] [REDACTED]
F5	Order of Disposition, dated [REDACTED]

- G1 CPS Investigation Report, complaint date [REDACTED]
- G2 Safety Assessment, dated [REDACTED]
- G3 Safety Assessment, dated [REDACTED]
- G4 Safety Assessment, dated [REDACTED]
- G5 Risk Assessment, dated [REDACTED]
- G6 Petition, Child Protective Proceedings, signed [REDACTED]
- G7 Order After Preliminary Hearing, dated [REDACTED]

ISSUES AND APPLICABLE LAW

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

Section 2 of the Child Protection Law, MCL 722.622, includes the following relevant definitions:

(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.

* * *

(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.

Section 7 of the Child Protection Law, MCL 722.627, provides in pertinent part as follows:

(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 in which no relevant and accurate evidence of abuse or neglect is found to exist. . . .

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 mother of Child A, Child B, Child C, Child D, Child E, and Child F (female, born [REDACTED]).

2. Respondent placed Petitioner's name on the Central Registry four times in connection with complaints dated [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

March 31, 2014 Complaint

3. On [REDACTED], Respondent received a complaint alleging that Petitioner had refused to pick Child C up from the [REDACTED] after Child C was discharged.
4. Ms. [REDACTED], a CPS Specialist, was assigned to investigate the complaint and prepared an investigation report for complaint dated [REDACTED] (Exhibit D1).
5. In connection with the investigation, [REDACTED] interviewed Petitioner, Child A, Child B, Child D, and Child E.
 - a. Petitioner told [REDACTED] that Child C had had mental health issues, was aggressive, and had threatened the family (Exhibit D1, pp. 7-8).
 - b. The children told [REDACTED] that Child C was aggressive and had made threats against the family before she was placed at [REDACTED], and they felt safe while she was not in the home. They all requested that Child C remain out of the home and receive more treatment. (Exhibit D1, pp. 9-11.)
6. In connection with its investigation, CPS completed a Safety Assessment indicating that legal action was necessary to place the children outside the home (Exhibit D2).
7. In connection with its investigation, CPS completed a Risk Assessment finding a neglect score of 4 and an abuse score of 2 resulting in an initial risk level of "moderate." An override was applied to the case raising the risk level to "intensive" due to the need for legal action because Petitioner refused to pick Child C from the [REDACTED] when she was discharged. (Exhibit D3.)
8. On [REDACTED], Respondent filed a petition with the [REDACTED] County [REDACTED] Judicial Circuit Family Division, alleging that Petitioner had abandoned Child C by refusing to pick her up on [REDACTED] following the child's inpatient psychiatric stay at the [REDACTED] and had failed to protect the other children from Child C's aggressive behavior. The petition requested that the court take the children into its temporary custody. (Exhibit D4.)
9. On [REDACTED], the court authorized the petition with respect to Child C (Exhibit D5, pp. 1-4).
10. In a [REDACTED] Order of Adjudication, the court took jurisdiction over Child A, Child B, Child C, Child D, and Child E based on Petitioner's admissions (Exhibit D5, pp. 5-9). An addendum to the order required individual and family therapy for Petitioner and all the children and specialized parenting classes to help Petitioner

deal with Child C's extensive mental health history and needs. Child C was placed in residential placement to address her psychiatric needs and the remaining children were allowed to remain in the home with Petitioner although Petitioner was allowed to file for incorrigibility regarding Child B. (Exhibit A, p. 10.)

11. On [REDACTED], CPS completed its investigation and made the following dispositional finding in its report: there was sufficient evidence to support the allegations of improper supervision and abandonment by Petitioner with respect to Child C. The case was determined a Category I with a high risk level and a discretionary override. (Exhibit D1, pp. 2, 12.)
12. Respondent placed Petitioner on the Central Registry with respect to the [REDACTED] [REDACTED] complaint date.

[REDACTED] Complaint

13. On [REDACTED], Respondent received a complaint alleging that Petitioner had physically abused Child B by choking her and Child A by punching her on the side of the face and scratching her chest.
14. Ms. [REDACTED] investigated the complaint and prepared an investigation report for complaint dated [REDACTED] (Exhibit E1).
15. In connection with the investigation, [REDACTED] interviewed Petitioner; Child A; Child B; Child C; Child D; Child E; [REDACTED], Petitioner's boyfriend; and [REDACTED], Petitioner's grandmother.
 - a. At the interview, Child B reported to [REDACTED] that Petitioner had yelled at her for coming home late and then Petitioner put her fist on her throat and applied pressure. Child B started screaming that she could not breathe and told Petitioner to let go or she would punch her in the stomach. Petitioner then threatened to shoot her in the head. Child B told [REDACTED] that Child A got Petitioner off her and Petitioner punched Child A in the face and scratched her chest. Child B reported that there were guns in the home and she was concerned for her safety. (Exhibit E1, p. 11.)
 - b. Child A reported that Petitioner had choked Child B and Child B started crying and saying she could not breathe. Child A stated Petitioner hit her in the face when she ran to pull Petitioner off Child B. She heard Petitioner tell Child B that she would shoot her in the head if she continued to act out. Child A was not observed to have any visible marks. (Exhibit E1, p. 10.)
 - c. Petitioner explained that Child A and Child B had been disobeying her and lying and she had confronted them for coming home late on [REDACTED]. She denied choking Child B, stating that she only pulled her at the collar and Child B overreacted. She also denied injuring Child A or threatening to shoot Child B. (Exhibit E1, pp. 7-8.)

- d. Child D and Child E both reported hearing Child B screaming that she could not breathe, seeing Child A try to get into the room with Petitioner and Child B, and seeing [REDACTED] get Child B's inhaler. Child D reported that Child B could breathe but had been acting. When asked how he knew she was able to breathe, he stated that Petitioner explained that Child D wanted to cause a scene. (Exhibit E1, pp. 12-13.)
 - e. [REDACTED] reported that Petitioner had grabbed Child B by the collar, Child B threatened to kick her in the stomach, and Petitioner responded that she had "brought [her] into this world and . . . will take [her] out." Child D and Child E were in the hallway crying, telling Petitioner to let Child B go because she could not breathe, and he heard Petitioner tell them she was not hurting her. (Exhibit E1, p. 15).
 - f. [REDACTED] reported that Child A and Child B were very disrespectful towards Petitioner. She reported that Petitioner grabbed Child B by the shirt near the neck area and Child B told her to let go because she could not breathe. [REDACTED] went to get Child B's inhaler. She denied that there was any incident between Petitioner and Child A. (Exhibit E1, p. 16.)
16. CPS asked Petitioner to take the children to the doctor due to the allegations of physical abuse, but Petitioner refused to do so (Exhibit E1, p. 5).
17. In connection with its investigation, CPS completed a Safety Assessment resulting in a finding that legal action was necessary to place the children outside the home (Exhibit E2).
18. In connection with its investigation, CPS completed a Risk Assessment finding a neglect score of 5 and an abuse score of 4 resulting in an initial risk level of "high." (Exhibit E3.)
19. On September 10, 2014, Respondent filed a supplemental petition with the [REDACTED] County [REDACTED] Judicial Circuit Family Division seeking to remove Child A, Child B, Child D and Child E from Petitioner's home due to Petitioner's long history of failure to protect and improper supervision despite Families First and individual and family counseling that had been offered. (Exhibit E4.)
20. In a [REDACTED] Order After Preliminary Hearing, the court found probable cause that one or more of the allegations in the petition were true and concluded that it was contrary to the welfare of the children to remain in the home due to Petitioner physically abusing Child B by choking her and threatening to shoot her and because the children had indicated that there was a gun in the home. The court authorized the petition. (Exhibit E5; Exhibit E1, pp. 14-15).
21. On [REDACTED], CPS completed its investigation and made the following dispositional finding in its report: there was sufficient evidence to support the allegations of physical abuse and threatened harm of Child A, Child B, Child D and

Child E. The case was determined a Category I with a high risk level. (Exhibit E1, p. 18.)

22. On [REDACTED], Child D and Child E were returned home with reunification services but continued to be court wards (Exhibit F1, p. 2).
23. Respondent placed Petitioner on the Central Registry with respect to the [REDACTED] [REDACTED] complaint date.

[REDACTED] Complaint

24. On [REDACTED], Respondent became aware pursuant to a birth match that Petitioner had given birth to Child F and a referral alleging improper supervision and threatened harm of Child F was received.
25. Ms. [REDACTED] investigated the complaint/referral and prepared an investigation report for complaint dated [REDACTED] indicating that there was no concern regarding Petitioner's care of Child F but a petition concerning Child F would be filed due to threatened harm, birth match, and improper supervision of Child F by Petitioner (Exhibit F1).
26. In connection with its investigation, CPS completed a Safety Assessment recommending the child's removal from the home (Exhibit F2).
27. In connection with its investigation, CPS completed a Risk Assessment finding a neglect score of 2 and an abuse score of 1 resulting in an initial risk level of "moderate." A mandatory override was applied to the case raising the risk level to "intensive" due to the prior removal of five of Petitioner's children from her care. (Exhibit F3.)
28. On [REDACTED], Respondent filed a petition with the [REDACTED] County [REDACTED] Judicial Circuit Family Division seeking to place Child F in the court's temporary custody but in Petitioner's care and custody. (Exhibit F4.)
29. On [REDACTED], CPS completed its investigation and made the following dispositional finding in its report: there was sufficient evidence to support the allegations of birth match and threatened harm of Child F. The case was categorized a Category I. (Exhibit F1, p. 8.)
30. A [REDACTED] Order of Disposition indicated that an adjudication had been held and Child F was found to come within the court's jurisdiction and was released to the care of [REDACTED], her father (Exhibit F5).
31. Respondent placed Petitioner on the Central Registry with respect to the [REDACTED] [REDACTED] complaint date.

██████████ Complaint

32. On ██████████, Respondent received a complaint alleging improper supervision, physical neglect, and threatened harm of Child C due to Petitioner refusing to allow Child C to return home from ██████████, where she had been placed to have her psychiatric medications adjusted following her verbally and physically destructive behavior.
33. Ms. ██████████ investigated the complaint and prepared an investigation report for complaint dated ██████████ (Exhibit G1).
34. In connection with the investigation, ██████████ interviewed Petitioner, Child C, Child D, Child E, ██████████, ██████████, and ██████████, a ██████████ employee.
- a. Petitioner reported that because of Child C's aggressive behavior, she was concerned about the safety of herself and the other children in the home. She reported that ever since Child C had returned to the home on ██████████ ██████████, she had been very aggressive, choking and hitting her brothers on a regular basis, throwing food outside that she does not want to eat, and hitting Petitioner. Child C's bedroom was observed to be destroyed with the whole bed taken apart and a hole punched in the wall. Petitioner explained that she had called the police twice but they refused to assist because it was a civil matter. She denied refusing to pick Child C from ██████████, contending that the child had not been given a discharge date. (Exhibit G1, pp. 10, 16).
 - b. Child E reported that Child C hit Petitioner and pulled her hair and Petitioner hit Child C back. Child C had been putting him and his brother in a headlock, hitting their heads, and choking them. He did not feel safe with Child C in the home. (Exhibit G1, p. 8.)
 - c. Child D reported that Child C cursed all day, hit him and his brother in the head with her fist when Petitioner was feeding Child F, and had choked him. He reported that he did not feel safe with Child C in the home (Exhibit G1, p. 9).
 - d. ██████████ and ██████████ reported that Child C's behavior was out of control and she should not come back into the home (Exhibit G1, p. 12).
 - e. Child C did not respond to questions concerning whether she hit her brothers and laughed when she was asked several times if she threw food out the house. She admitted sleeping on the living room cocktail table and bathroom tub and throwing the ladder from her bunkbed down the stairs and almost hitting ██████████ when he was holding Child F. (Exhibit G1, p. 13.)
 - f. On ██████████, ██████████ advised ██████████ that Child C had not displayed any aggressive behavior since being placed at ██████████ but would not be ready for discharge until sometime next week. Petitioner had reported to him that she was not willing to pick up Child C. (Exhibit G1, p. 14.)

- g. Child C was diagnosed with bipolar disorder, attention deficit hyperactivity disorder, oppositional defiant disorder, and post-traumatic stress disorder (Exhibit G1, pp. 16, 21).
35. In connection with its investigation, CPS completed three Safety Assessments on [REDACTED] recommending the child's removal from the home (Exhibit G2, G3 and G4).
36. In connection with its investigation, CPS completed a Risk Assessment finding a neglect score of 4 and an abuse score of 2 resulting in an initial risk level of "moderate." An override was applied to the case raising the risk level to "intensive" due to the [REDACTED] change of plan petition removing Child C from the home. (Exhibit G5.)
37. On [REDACTED], at the direction of the court after Petitioner reported at the [REDACTED] court hearing that she did not want Child C back in the home, Respondent filed a Petition with the court requesting that the court authorize the petition and take jurisdiction over Child C. (Exhibit G6; Exhibit G1, p. 15.)
38. In a [REDACTED] Order After Preliminary Hearing, the court authorized the petition and Child C was placed in Respondent's care and supervision (Exhibit G7).
39. On [REDACTED], CPS completed its investigation and made the following dispositional finding in its report: there was sufficient evidence to support the allegations of threatened harm, physical neglect and improper supervision of Child C by Petitioner. The case was Category I. (Exhibit G1, p. 21.)
40. Respondent placed Petitioner on the Central Registry with respect to the [REDACTED] [REDACTED] complaint date.

Procedural History

41. On [REDACTED] Petitioner requested that Respondent remove her name from the Central Registry.
42. On [REDACTED], Respondent denied Petitioner's request.
43. On [REDACTED], Petitioner submitted a second request to Respondent asking that her name be removed from the Central Registry and requesting a hearing if Respondent denied her request.
44. On [REDACTED], Respondent forwarded Petitioner's requests, as well as its denial and hearing summary, to the Michigan Administrative Hearing System.

CONCLUSIONS OF LAW

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. MCL 722.627(7). The principles that govern judicial proceedings also apply to administrative hearings. As a trier of fact, the Administrative Law Judge must determine the weight, the effect, and the value of the evidence, including the testimony of all witnesses.

When a hearing is requested, the presiding Administrative Law Judge conducts a *de novo* review in which 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. A preponderance of evidence is evidence which is of a greater weight or more convincing than evidence offered in opposition to it. Protective Services Manual (PSM) 711-4 (May 2016), p. 9. 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). 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. Central Registry placement is evaluated in terms of the legal circumstances present at the time of the listing.

In this case, Respondent listed Petitioner's name and identifying information on the Central Registry in connection with four separate complaint dates: [REDACTED]

Central Registry Listing for [REDACTED] Complaint Date

With respect to the [REDACTED] complaint, Respondent alleged that Petitioner was the perpetrator of child neglect and abuse because she improperly supervised and abandoned Child C by refusing to allow Child C, then 11 years old, to return to her home after the child was discharged from [REDACTED], an inpatient psychiatric facility.

Under PSM 711-5 (November 2013), p. 6, child neglect includes improper supervision and abandonment. Improper supervision is defined as "placing the child in, or failing to remove the child from, a situation that a reasonable 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. Abandonment is defined as follows:

Placing or leaving a child with an agency, person or other entity (e.g., DHS, hospital, mental health facility, etc.) without:

- Obtaining an agreement with that person/entity to assume responsibility for the child or

- Cooperating with the department to provide for the care and custody of the child.

PSM 711-5, pp. 4-5.

Petitioner explained that she refused to pick Child C from the [REDACTED] because she did not believe that the child was mentally stable and feared for her safety and the safety of the other children in her home. The other children in the home were interviewed in connection with the [REDACTED] complaint and all stated that Child C was aggressive and had made threats against the family before she was placed at [REDACTED], and they did not believe she should return home until she had additional treatment.

Although Petitioner had safety concerns regarding Child C's return to her home, the evidence presented established that [REDACTED] had concluded that Child C was stable for discharge and Petitioner did not have a plan for the child's placement upon her discharge from the facility. Because Petitioner refused to allow Child C back in her home and had not made alternative arrangements for Child C, the child was left with no care plan in place. Therefore, Respondent has established by a preponderance of evidence that Petitioner abandoned Child C and improperly supervised her.

Additionally, Respondent filed a temporary custody petition with the circuit court alleging that Petitioner had abandoned Child C by refusing to pick her up from the [REDACTED] upon discharge. Although Petitioner had initially been scored "moderate" on the risk assessment, and thus classified Category III, once Respondent filed the temporary custody petition, Department policy provides that the case must be elevated to Category I and the perpetrator's name must be placed on the Central Registry. PSM 713-11 ([REDACTED]), p. 3. The order of adjudication indicates that Petitioner, who was represented by counsel at the hearing, made admissions upon which the court based its finding that there were statutory grounds under MCL 712A.2(b) to exercise jurisdiction over the children. The court's findings underlying its statutory grounds for jurisdiction further support Respondent's finding of neglect and abuse, and the court's authorization of the petition requires the classification of the matter as a Category I and the listing of Petitioner as a perpetrator of abuse and neglect on the Central Registry with respect to the CPS complaint dated [REDACTED].

Therefore, Respondent properly placed Petitioner's name on the Central Registry with respect to the [REDACTED] complaint.

Central Registry Listing for [REDACTED] Complaint Date

With respect to the [REDACTED] complaint, Respondent alleged that Petitioner was the perpetrator of child neglect and abuse due to physical abuse and threatened harm of Child A, Child B, Child D and Child E.

Abuse includes physical abuse, which is defined as a nonaccidental occurrence of dislocations, sprains, internal injuries, bruises, welts, open wounds, and loss of

consciousness. PSM 711-5, pp. 3-4. Nonaccidental means expected, intentional, incidental, and/or planned behavior on the part of the parent, which results in physical or mental injury to the child, i.e., an action which a reasonable person would expect to be a proximate cause of an injury. PSM 711-5, p. 3. Threatened harm is found when a child is found in a situation where harm is likely to occur based on (i) a current circumstance (e.g., home alone, domestic violence, drug house) or (ii) 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. PSM 711-5, pp. 6-7.

The evidence presented established that there was an altercation between Petitioner and Child B. At the time of the CPS investigation, Child B reported that Petitioner put her fist into her throat and applied pressure so that she could not breathe. She admitted she threatened to kick Petitioner, then pregnant, in the stomach if she did not release her and stated Petitioner responded that she would shoot her in the head. Petitioner contended that Child A and Child B were both out of control, with testimony from [REDACTED] and [REDACTED] supporting her position. Petitioner alleged that Child B was overreacting and both Child A and Child B had lied and reported her to CPS in order to be removed from the home and so Child A could be placed with her boyfriend's mother. However, Child A, Child B, Child C, and Child D, as well as Mr. [REDACTED] and Ms. [REDACTED], were all interviewed following the [REDACTED] incident and all reported that Child B had yelled out that she could not breathe. Child C and Child D admitted they were crying because Child B was yelling that she could not breathe. The children also reported that [REDACTED] had gone to get Child B's inhaler. [REDACTED] admitted he was in another room and did not witness the altercation, but he heard it. While there was no physical evidence of any injury to Child B, CPS reported that Petitioner refused to obtain a medical examination of the children. At the hearing, Petitioner contended that she did obtain a medical examination, but she failed to produce a report of any such exam to counter Respondent's evidence. Although the evidence does not establish that Child B had a physical injury as a result of Petitioner's actions, there was a preponderance of evidence to establish threatened harm to Child B and the other children in the home.

Additionally, Respondent completed a risk assessment finding a neglect score of 5 and an abuse score of 4 resulting in an initial risk level of "high," resulting in a Category I classification. When there is a preponderance of evidence of child abuse and neglect and a high-risk level, Category I classification, the perpetrator must be listed on the Central Registry. PSM 713-11, pp. 2-3. The fact that a supplemental petition was filed with the circuit court alleging that Petitioner had physically abused and threatened harm to the children and the court authorized the petition would provide further support of the Central Registry listing. PSM 713-11, p. 3.

Because there was a preponderance of evidence of abuse and/or neglect, substantiation of the risk assessment at a "high" level and a Category I classification, Respondent properly placed Petitioner's name on the Central Registry with respect to the [REDACTED] complaint.

Central Registry Listing for [REDACTED] Complaint Date

On [REDACTED], Petitioner gave birth to Child F, and Respondent concluded that Petitioner was the perpetrator of child neglect and abuse with respect to Child F based on birth match and threatened harm.

“Birth match” is an automated system that notifies the local Department of Health and Human Services office when a child is born to a parent who has previously had parental rights terminated in a child protective proceeding, caused the death of a child due to abuse and/or neglect, or has been manually added to the match list. PSM 715-3; PSM 713-09 ([REDACTED]), pp. 3-4. Threatened harm exists when a child is found in a situation where harm is likely to occur based on (i) a current circumstance (such as the child left alone at home or found in a drug house) or (ii) a historical circumstance (such as a history of abuse/neglect, a prior termination of parental rights, or a conviction for crimes against children) unless there is evidence found during the investigation that past issues have been successfully resolved. PSM 713-08 ([REDACTED]), p. 1. In assessing the threat of harm, Respondent must consider not only current evidence of abuse/neglect but also whether a preponderance of evidence exists based solely on historical facts and evidence. PSM 713-08, p. 2. To determine the safety of a child in a threatened harm situation, Respondent must consider the severity of past behavior, length of time since the past incident, evaluation of participation in and benefit from services to determine if past behaviors have been resolved, comparison between past history and current complaint, and vulnerability of the child due to age, mental capacity, or disability. PSM 713-08, pp. 3-4.

In this case, Respondent completed a risk assessment finding a neglect score of 2 and an abuse score of 1 a resulting in an initial risk level of “moderate.” The neglect score is based on the finding that the current complaint involved neglect, including allegations of neglect. PSM 713-11, p. 5. Even though Respondent concluded following the CPS investigation that there was not a preponderance of evidence of neglect, because the CPS complaint initially alleged improper supervision, which is a neglect category, the evidence supports the neglect score. PSM 7111-5, p. 6. Further, Respondent filed a petition with the circuit court to take Child F into its temporary custody due to the fact that Respondent’s five other children were in the court’s temporary custody. The Order of Disposition, which removed Child F from Petitioner’s care and released her to her father, [REDACTED], indicates that an adjudication was held and the child was found to come within the court’s jurisdiction. Thus, the case was a Category I case. Because Petitioner’s other children continued to be in the court’s temporary custody and the court took Child F into its temporary custody, Respondent established threatened harm of Child F by Petitioner by a preponderance of evidence.

Because there was a preponderance of evidence of abuse and/or neglect and the filing and authorization of a petition to take Child F into the court’s temporary custody, making the matter a Category I case, Respondent properly placed Petitioner’s name on the Central Registry with respect to the [REDACTED] complaint.

Central Registry Listing for [REDACTED] Complaint Date

With respect to the [REDACTED] [REDACTED] complaint, Respondent concluded that a preponderance of evidence established that Petitioner was the perpetrator of child neglect and abuse because she threatened harm, physically neglected and improperly supervised Child C by refusing to allow the child to return to her home after she was discharged from [REDACTED], a mental health facility.

Child neglect includes physical neglect and improper supervision. PSM 711-5, pp. 5-7. As discussed above, improper supervision involves “placing the child in, or failing to remove the child from, a situation that a reasonable 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. Physical neglect is “negligent treatment, including but not limited to failure to provide, or attempt to provide, the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding those situations solely attributable to poverty.” Threatened harm exists when a child is found in a situation where harm is likely to occur based on a current circumstance or a historical circumstance. PSM 711-5, pp. 6-7; PSM 713-08, pp. 1-2.

As in the [REDACTED] incident, Petitioner explained that Child C was acting very aggressively and she and the other children in the home were concerned for their safety due to her behavior. Child D and E both reported not feeling safe with Child C in the home. [REDACTED] both reported that Child C’s behavior was out of control and she should not return to the home. At the hearing, [REDACTED], Petitioner’s great grandmother, testified that Child C was not stable at discharge from [REDACTED].

Petitioner does not dispute that she did not want to have Child C returned to her home. The evidence shows that, when Petitioner advised the court at a [REDACTED] hearing that she did not want the child back in her home, the court ordered Respondent to file a petition. Respondent filed a petition with the court alleging that Child C was without proper care and custody and requesting that the court take Child C into its temporary custody. The order following preliminary hearing shows that the child was removed from Petitioner’s home.

Petitioner’s refusal to take Child C back into her home upon her discharge from [REDACTED] left the child without a home. Thus, a preponderance of evidence supports Respondent’s finding of physical neglect and threatened harm. Because of Respondent was required to file a petition with the court, the case was properly categorized as a Category I. See PSM 713-11, p. 3. The filing of the petition with the circuit court, resulting in the child’s removal from Petitioner’s care, further supported the finding of a preponderance of evidence of neglect.

Because there was a preponderance of evidence of neglect and the matter is classified as a Category I due to the filing of the petition, Respondent properly listed Petitioner as a perpetrator of abuse and neglect on the Central Registry with respect to the CPS complaint dated [REDACTED].

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 Michigan's Central Registry with respect to complaints dated [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. Therefore, Respondent's refusal to remove Petitioner's name from the Central Registry for each of the four complaints is upheld.

DECISION AND ORDER

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

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




Alice C. Elkin
Administrative Law Judge
For Nick Lyon, Director
Michigan 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, P.O. Box 30763, Lansing, MI 48909 (fax 517-373-4147 [OR 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 [REDACTED] day of [REDACTED].



Tammy L. Feggan, Legal Secretary
Michigan Administrative Hearing System

Via Email:

[REDACTED]
[REDACTED]
[REDACTED]

Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]