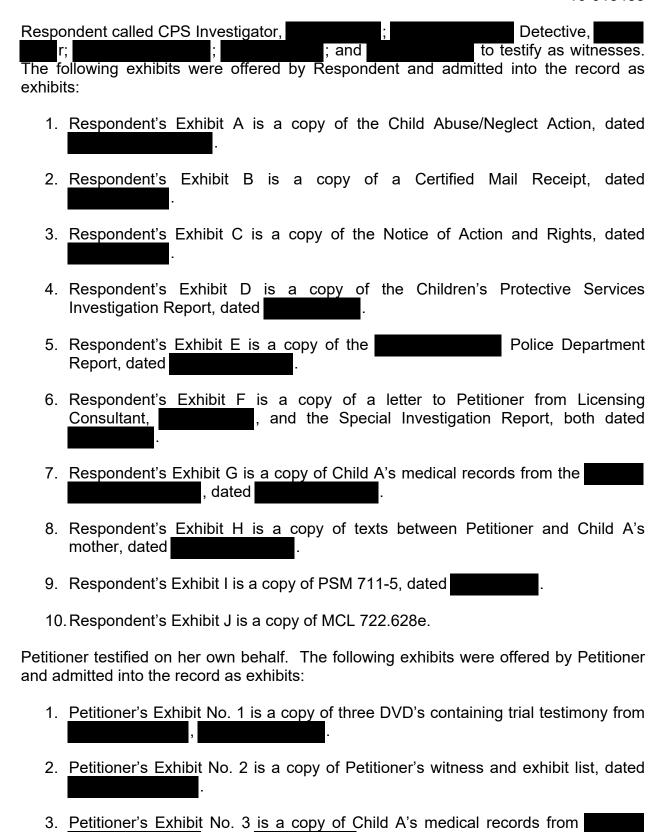
RICK SNYDER GOVERNOR

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

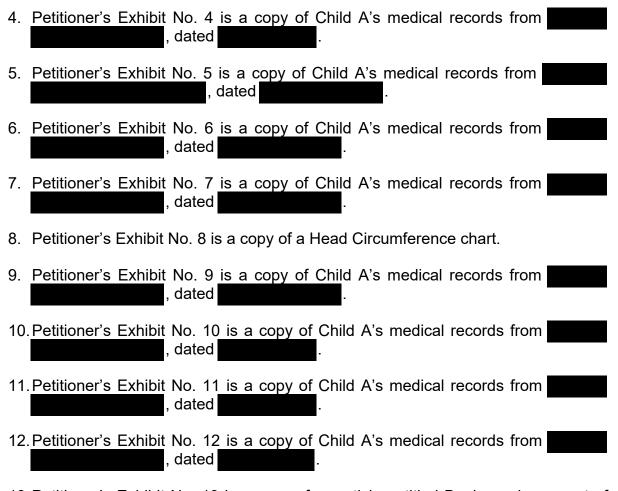
SHELLY EDGERTON DIRECTOR

IN THE MATTER OF:	MAHS Docket No.: 16-015488			
Petitioner	Agency Case No.:			
v	Case Type:	Expunction		
, Respondent				
Issued and entered this 27 <sup>th</sup> day of April 2017 by Vicki L. Armstrong Administrative Law Judge				
DECISION AND ORDER				
PROCEDURAL HISTORY				
expunge the name or identifying information Michigan Child Abuse and Neglect Central	ed on notification (Department), Re n of al Registry (Centretion concerned Pe	from the spondent, that it would not Petitioner, from the al Registry) for referral or titioner's alleged violation of		
On , a Notice of Hear , and	On , an Order	scheduling the hearing for Petitioner submitted a Granting Adjournment was hearing date. The hearing		
The hearing was held, as scheduled, on herself at the proceeding.	, Children's P	. Petitioner represented rotective Services (CPS)		

Supervisor, appeared on behalf of Respondent.



, dated



- 13. Petitioner's Exhibit No. 13 is a copy of an article entitled Benign enlargement of subarachnoid spaces: a cause of subdural hemorrhage in toddlers.
- 14. Petitioner's Exhibit No. 14 is a copy of an article entitled Macrocephaly.
- 15. Petitioner's Exhibit No. 15 is a copy of an article entitled Benign enlargement of the subarachnoid space in infancy.
- 16. Petitioner's Exhibit No. 16 is a copy of an article entitled Macrocephaly in infancy: benign enlargement of the subarachnoid spaces and subdural collections.
- 17. Petitioner's Exhibit No. 17 is a copy of an article entitled Subdural Hematomas in Infants with Benign Enlargement of the Subarachnoid Spaces Are Not Pathognomonic for Child Abuse.
- 18. Petitioner's Exhibit No. 18 is a copy of an article entitled The Significance of Macrocephaly or Enlarging Head Circumference in Infants with the Triad, dated

19. Petitioner's Exhibit No. 19 is a co	opy of the	,	
's Order of Acquittal, dated			

20. Petitioner's Exhibit No. 20 is a copy of a Power Point presentation entitled Slides, dated ...

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 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:

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:

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: \* \* \*.

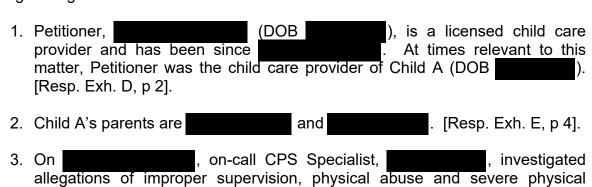
- (4) If the department classifies a report of suspected child abuse or child neglect as a central registry case, the department shall maintain a record in the central registry and, within 30 days after the classification, shall notify in writing each person who is named in the record as a perpetrator 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.

According to Children's Protective Services Manual 711-5, a person responsible for the child's health or welfare means:

A person who cares for the child in a licensed or registered child care center, group child care home, family child care home, children's camps or child caring institution, as defined in Section 1 of 1973 PA 116 or a licensed or unlicensed adult foster care family home or adult foster care small group home as defined in Section 3 of 1979 PA 218. PSM 711-5, pp 1-2 (5/1/2016).

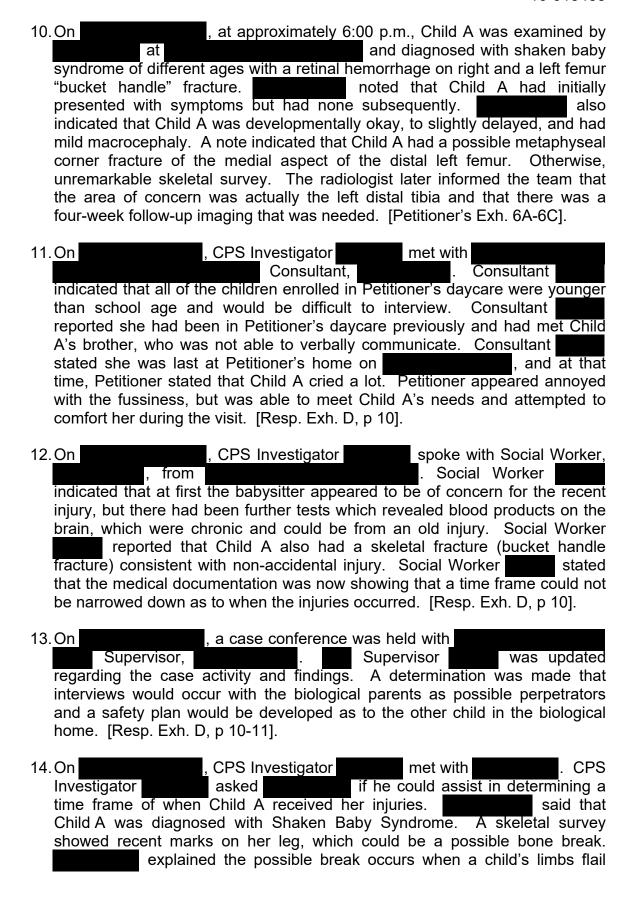
#### **FINDINGS OF FACT**

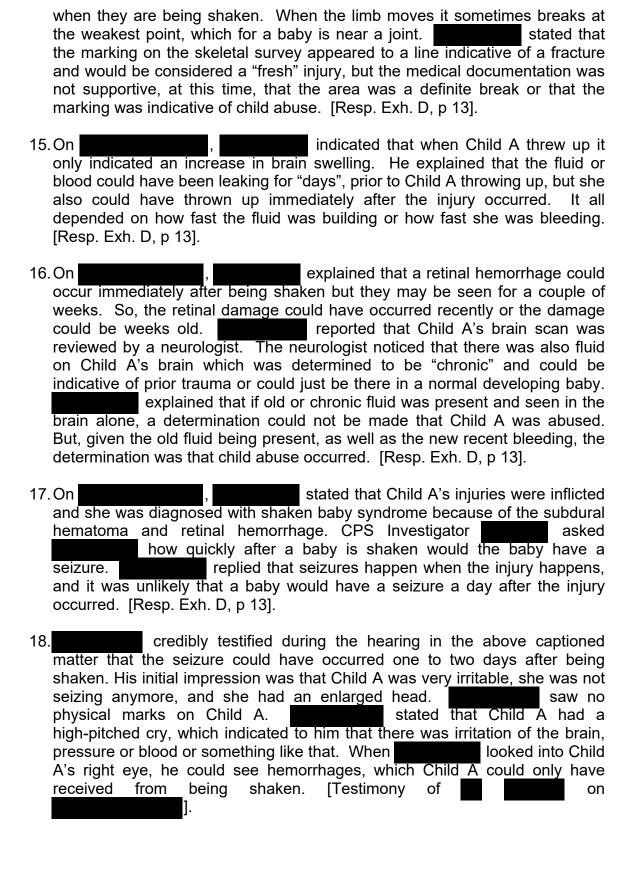
Based upon the entire record in this matter, including the testimony and the exhibits, the following findings of fact are made:

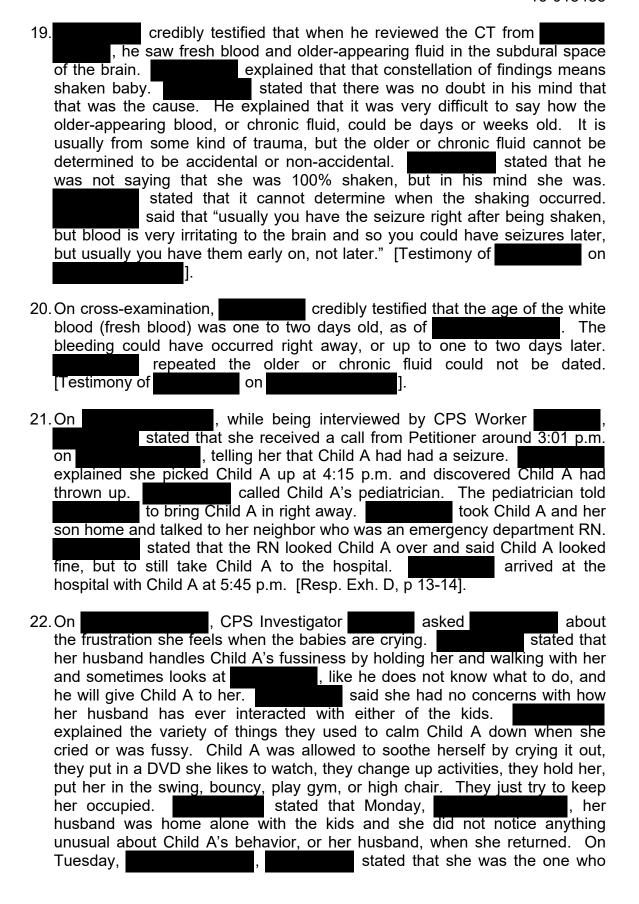


abuse against Petitioner for Child A being diagnosed at the emergency

department with a subdural hematoma, suspected to be a non-accidental injury caused while in Petitioner's care. [Resp. Exh. D, p 7-8]. 4. On , at approximately 12:54 a.m., while Child A was at the , the emergency emergency department at department physician, noted that Child A had a large head and that he was unable to visualize tympanic membrane (TM) due to cerumen. He did note that Child A had a healing scratch over her right forehead, otherwise atraumatic. [Petitioner's Exh. 5A]. 5. On , on-call CPS Specialist made contact with Child A and at the stated that -old child who was in daycare and was reported to Child A was a have had a "60 second episode of jerking motions and a possible fever." reported that Child A was reported to be in good health and was not sick at the moment. explained that Child A was taken to the hospital and then transferred to due to Child A having a subdural hematoma. stated that Child A had a "6 millimeter off mid-line shift which meant that her brain was pushed over 6 millimeters." showed on-call CPS Specialist a head scan of Child A showing fresh and old blood around Child A's brain. stated that the scan indicated that, most likely, Child A was shaken and the blood around her brain caused a seizure. [Resp. Exh. D, p 7-8]. 6. On , at approximately 1:15 a.m., on-call CPS Specialist spoke with Child A's mother, , at the hospital. reported that she received a call at about 3:00 p.m. on , from Petitioner, who told her that Child A had a seizure. stated she went to pick Child A up and took her home. reported that Child A threw up, looked pale and was difficult to stated she took Child A to a neighbor who was a keep awake. registered nurse (RN), who advised her to take Child A to the emergency room. [Resp. Exh. D, p 8]. 7. On , the CPS investigation was transferred to CPS Investigator, . CPS Investigator Wiseman spoke with CPS who reported that there was medical evidence that Specialist Child A was shaken and a time frame was narrowed down when it likely occurred at the daycare. [Resp. Exh. D, p 9]. 8. stated to CPS Investigator that Child A was home with , and Tuesday, her on Monday, . [Resp. Exh. D, p 14]. 9. Testimony during the hearing showed that Child A was not in Petitioner's care , through . [Testimony of





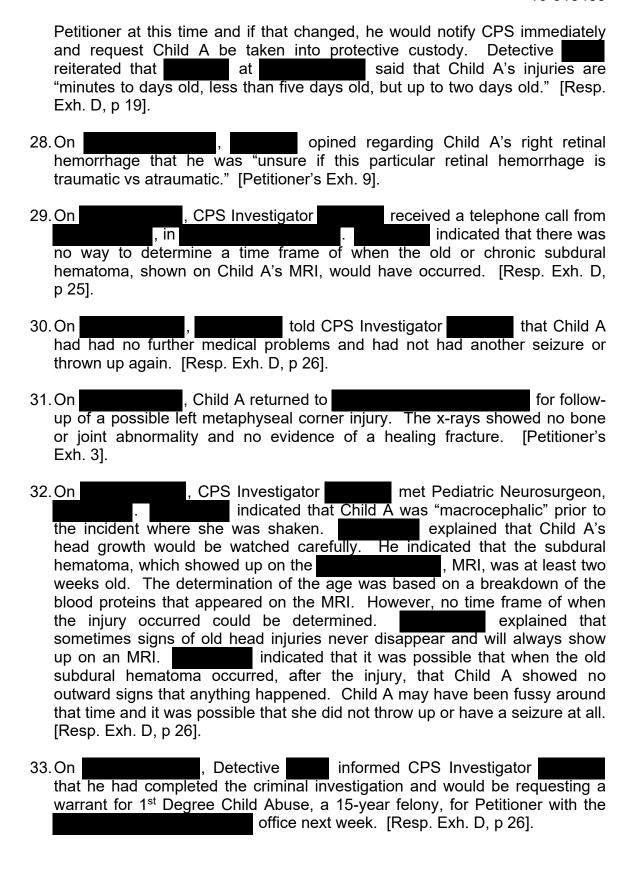


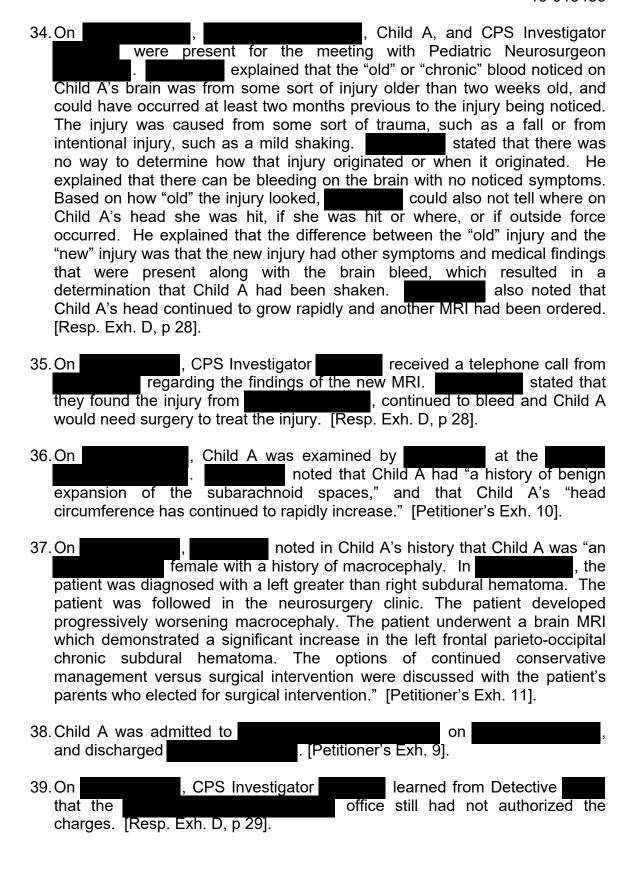
indicated that no one else had baby sat for the kids through the past weekend or week. [Resp. Exh. D, p 13-14]. 23. On . CPS Investigator interviewed Petitioner. Petitioner stated that was not easily calmed on Petitioner stated that she, and , were using text messages to communicate that Child A was crying again. Petitioner said Child A calmed down around noon and took a nap until 2:00 p.m. Petitioner stated that she checked on Child A frequently while she slept. At 2:00 p.m. Child A woke up and was still fussy. Petitioner tried feeding her and giving her a pacifier, then put her back in the bed with the fan on for white noise. Petitioner left the room where Child A was in the bed and Child A stopped crying about one to three minutes later. After Child A stopped crying, Petitioner checked on her and saw Child A's arms moving in a slow rowing motion, her hands were clenched, her eyes were closed, and she was moaning. Petitioner explained that she picked Child A up and she was very hot, so she took her sleeper off, and at that time Child A was limp. Petitioner said she held Child A up and out from her body to look at her face and was calling Child A's name, while slightly moving her up and down to rouse her. Petitioner called immediately. [Resp. Exh. D, p 16-17]. , CPS Investigator 24. On l had a case conference with MIC Supervisor . A plan was made to have law enforcement rule out the biological parents as suspects before Child A was released from the hospital and into the care of . [Resp. Exh. D, p 18]. , CPS Investigator called Detective 25. On , who was also investigating the the alleged child abuse. Detective indicated he could not entirely rule out the parents as alleged suspects until he spoke with the doctor. [Resp. Exh. D, p 18]. 26. On , CPS Investigator received a message from Detective that he had spoken with Child A's doctor in the Pediatric Intensive Care Unit (PICU), and at this time, Detective completely rule out the parents as the doctor reported Child A's injuries could be minutes to days old, and the doctor could not narrow down a time frame stated he had to speak with the parents before any better. Detective ruling them out as possible perpetrators, and asked CPS Investigator to have the parents get in touch with him. [Resp. Exh. D, p 18]. 27. On , Detective called CPS Investigator stated that if CPS agreed that it was okay to release Child A into the biological parent's care, then the police department was in agreement.

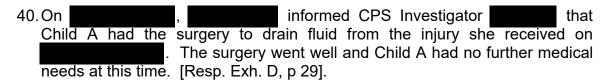
explained that the focus of the criminal investigation was on

Detective

stayed home with Child A when her husband had to leave.







- 41.On Respondent placed Petitioner's name on the Central Registry as a perpetrator of Physical Abuse. [Resp. Exh. C].
- 42. On a second issued an Order of Acquittal following a jury trial for the charges of Child Abuse-1<sup>st</sup> Degree and Child Abuse-2<sup>nd</sup> Degree. [Petitioner's Exh. 19].

#### **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.

Completion of the structured decision-making tool ("Risk Assessment") is not required when a registered child care organization (in this case a daycare) is investigated. However, the Respondent still has the burden to establish a preponderance of evidence that abuse or neglect was committed before any Central Registry placement can be upheld on appeal.

In this matter, Petitioner was placed on the Central Registry specifically for Physical Abuse. The policy definition of physical abuse (injury) is a nonaccidental occurrence of a subdural hemorrhage or hematoma. PSM 711-5, p 3 (5/1/2016).

A preponderance of evidence is evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it. *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948).

Based on the above findings of fact, Respondent has not proven by a preponderance of the evidence that it was legally appropriate to list Petitioner's name on Michigan's Central Registry. First, the record evidence shows that while most of the physicians were in agreement that Child A had been shaken, there was no evidence presented on who or when Child A was shaken.

The physicians agreed that Child A had been diagnosed with macrocephaly prior to the alleged injury on The basic facts are that when Child A was examined at the hospital, she had a subdural hematoma and a "6 millimeter off mid-line shift which meant that her brain was pushed over 6 millimeters." The initial head scan showed Child A had fresh and old blood around her brain. credibly stated that the scan indicated, most likely, that Child A had been shaken and the blood around her brain had caused a seizure. found that Child A had a retinal hemorrhage on the right and a left femur "bucket handle" fracture. On opined that he was unsure if Child A's right retinal hemorrhage was traumatic versus atraumatic. On x-rays showed no bone or joint abnormality and no evidence of a healing fracture of Child A's left femur. , CPS was informed that the medical documentation was Beginning on now showing that a time frame could not be narrowed down as to when the injuries occurred. on also informed CPS, that the fluid or blood could have been leaking for "days" prior to Child A throwing up, but she also could have thrown up immediately after the injury occurred. explained that a retinal hemorrhage could occur immediately after being shaken, or the damage could be weeks old. The neurologist noticed that there was also fluid on Child A's brain which was determined to be "chronic" and could be indicative of prior trauma or could just be there in a normally developing baby. testified, during the hearing in the above captioned matter, that the seizure could have occurred one to two days after being shaken. In addition, at said that Child A's injuries were "minutes to days old, less than five days old, but up to two days old." On , Pediatric Neurosurgeon indicated that the subdural hematoma, which showed up on the , MRI, was at least two weeks The determination of the age of the subdural hematoma was based on a breakdown of the blood proteins that appeared on the MRI. However, no time frame of when the injury occurred could be determined. According to Child A's mother, , Child A was with her biological parents in her home from Saturday, through and was her first time back at daycare.

Further, after learning that a time frame could not be narrowed down, a determination was made by CPS to interview the biological parents as possible perpetrators. Based on interviews, CPS found the biological parents were not the perpetrators and Child A was released into their care.

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

#### <u>ORDER</u>

## **NOW THEREFORE, IT IS ORDERED** that:

- 1. Respondent's denial decision as to Petitioner's placement on the Central Registry for complaint or referral date of REVERSED.
- 2. Respondent is hereby ORDERED to expunge Petitioner's name from the Central Registry for the complaint or referral date of the date of mailing of this Decision and Order.

Vicki L. Armstrong

Administrative Law Judge

**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), 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



