



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.: 16-016406

██████████
Petitioner

Agency Case No.: ██████████

v

Case Type: Expunction

██████████ **County DHHS,**
Respondent

_____ /

**Issued and entered
this 10th day of May 2017
by Vicki L. Armstrong
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This proceeding commenced with the issuance of a Notice of Hearing on ██████████, based on notification from the ██████████ County Department of Health and Human Services, 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 ██████████. 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 ██████████. Petitioner represented herself at the proceeding. ██████████, Children's Protective Services (CPS) Supervisor, appeared on behalf of Respondent. Respondent called CPS Investigator, ██████████, to testify as a witness. The following exhibits were offered by Respondent and admitted into the record as exhibits:

1. Respondent's Exhibit A is a copy of the CPS Investigation Report, dated ██████████.
2. Respondent's Exhibit B is a copy of the Investigation Risk Assessment Details and Risk Assessment Scores, dated ██████████.

3. Respondent's Exhibit C is a copy of PSM 713-11, Risk Assessment, dated [REDACTED].
4. Respondent's Exhibit D is a copy of PSM 713-13, Child Abuse and Neglect Central Registry (CA/NCR), dated [REDACTED].
5. Respondent's Exhibit E is a copy of the Notice of Action and Rights, dated [REDACTED].

Petitioner testified on her own behalf and called no witnesses. Petitioner offered no exhibits. 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.

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, [REDACTED] (DOB [REDACTED]) is the biological mother of son, "Child A" (DOB [REDACTED]), and daughter, "Child B" (DOB [REDACTED]). The children resided with Petitioner in [REDACTED], Michigan, at times relevant to this matter. [Resp. Exh. A].
2. [REDACTED] is Petitioner's live-together-partner. [REDACTED] resided with Petitioner and her children in [REDACTED], Michigan, at times relevant to this matter. [Resp. Exh. A].
3. [REDACTED] is the biological father of Child A. [Resp. Exh. A].
4. On [REDACTED], Respondent investigated allegations of failure to protect, improper supervision, medical neglect, and physical abuse against Petitioner. [REDACTED] brought Child A into the [REDACTED] [REDACTED] for a physical exam after he discovered Child A was [REDACTED].

- bruised head to toe. Child A was very distraught and would not talk about what happened to him. [Resp. Exh. A, pp 1, 19].
5. Child A's injuries were listed as a bruise on the left side of the face from eye to jaw; bruising from in front of the left ear to behind the left ear; petechial in both left and right outer ears, small bruise on upper right eye lid, and petechiae under both eyes, same bruising on right side of face with three scratches about two and a half inches long stretching from the ear to just before the nose; bruising on the right occipital of scalp with swelling, circular bruising about the size of a nickel to dime located just below the right clavicle, abrasions on the upper sternum, small bruise over the thoracic spine about the size of a dime, erythema (redness) and bruising on both buttocks, bruise on left ulnar forearm, left distal humerus abrasion, right ulna forearm bruise, bruise to the right medial knee and left lateral knee, tenderness in the right rib and abdomen, and dried blood at left nostril. [Resp. Exh. A, 19].
 6. On [REDACTED], CPS went to the emergency department in order to verify the well-being of Child A. Child A was observed and a forensic interview was conducted. Child A disclosed that he was "spanked all over" by [REDACTED]. Child A stated it happened because [REDACTED] wanted to pee on him. Child A's father was present. Due to Child A's autism and behavioral issues, Child A would not allow himself to be interviewed without his father present. Child A stated that he kept telling [REDACTED] "no" and "stop." Child A stated he was yelling and crying when this happened and that Petitioner was in the home when this occurred. [Resp. Exh. A, pp 6-7, 19].
 7. On [REDACTED], after the interview with CPS, Child A disclosed to Petitioner that "[REDACTED] spanked me. He spanked me all over and grabbed me like this," and Child A grabbed his own neck and face with his hands. [Resp. Exh. A, 19].
 8. On [REDACTED], CPS interviewed Petitioner at the emergency department. Petitioner stated she lived at home with her two children, and live-together-partner, [REDACTED]. Petitioner denied any knowledge of how the bruising occurred. She stated that she could not think of a specific incident that caused Child A's injuries. Petitioner reported that Child A falls down often and plays rough with the dogs, however she denied any knowledge of a specific fall or event that could have caused Child A's injuries. [Resp. Exh. A, pp 7-8, 19].
 9. On [REDACTED], the police interviewed Petitioner. Petitioner stated that Child A fell down the steps around midnight. Petitioner stated that she was in bed at the time, but that [REDACTED] was downstairs and awake. Petitioner stated that she only knew it happened because [REDACTED] informed her of the incident the next day. Petitioner indicated that [REDACTED] knew Child A had fallen down the stairs and had put him back to bed after the incident.

- Petitioner stated that [REDACTED] reported some redness on Child A at the time of the initial incident but reported no marks or bruises. Petitioner admitted to CPS that she saw the bruising on her son when he woke up that morning. Petitioner reported that she placed ice packs on his facial bruises. [Resp. Exh. A, pp 8, 19-20].
10. CPS interviewed [REDACTED] on [REDACTED]. [REDACTED] stated that while he was taking Child A to a dental appointment, Child A stated that [REDACTED] had poured water on him and spanked him. [REDACTED] indicated that he had received a text message from Petitioner that morning reporting that Child A had fallen down the stairs as he was going to his room and that he was black and blue from it. [Resp. Exh. A, pp 6-7].
 11. Petitioner testified in the above captioned matter that she was not woken up during the night. She stated that Child A was wet when she woke him so she brought him upstairs to bathe him and while washing his hair, she noticed Child A's facial bruising. Petitioner stated that Child A had fallen down the stairs and she put ice packs on his face. Petitioner stated that she called [REDACTED] and reported that Child A had bruises all over his body and that Child A had to go to the doctor. Petitioner explained that when [REDACTED] showed up, she had him take Child A to the doctor. [Testimony of Petitioner].
 12. Petitioner's testimony was less than credible in that it conflicted with her previous statements.
 13. On [REDACTED], CPS met with [REDACTED] for an Ex-Parte Order regarding the removal of Child A and Child B from the custody of their mother, Petitioner, and the removal of Child C and Child D from the custody of their father, [REDACTED]. The Petition was authorized and the children were taken into protective custody. [Resp. Exh. A, p 9].
 14. On [REDACTED], CPS spoke with [REDACTED] who stated that an MRI was completed of Child A that revealed multiple subdural hematomas, hemorrhagic bruising over two areas, and bruised bones along Child A's spine. [REDACTED] stated that the injuries were consistent with Child A being slammed into something hard, like a wall, but not consistent with a fall down the stairs. [Resp. Exh. A, pp 9-10].
 15. On [REDACTED], Respondent placed Petitioner's name on the Central Registry as a perpetrator of Medical Neglect, Failure to Protect, and Improper Supervision. [Dept. Exh. E].

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).

In this matter, Respondent found that Petitioner's actions constituted child neglect based on Medical Neglect, Failure to Protect and Improper Supervision.

The Department's policy, as set forth in the Protective Services Manual (PSM), defines "Medical Neglect" as a "[f]ailure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a risk of death, disfigurement or bodily harm or with the failure resulting in an observable and material impairment to the growth, development or functioning of the child." PSM 711-5, p 5 (5/1/2016).

"Failure to Protect" is defined in policy as knowingly allowing another person to abuse and/or neglect the child without taking appropriate measures to stop the abuse and/or neglect or to prevent it from recurring when the person is able to do so and has, or should have had, knowledge of the abuse and/or neglect." PSM 711-5, p 6 (5/1/2016).

"Improper supervision" is defined in policy as "[p]lacing 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."

Here, the record evidence clearly shows that Petitioner knew, or had reason to know, that leaving Child A in the care of her live-together-partner, [REDACTED], on an

unsupervised basis was contrary to the child placement requirements and that doing so put Child A in a situation where harm might well occur.

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.

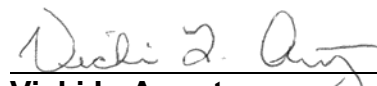
Regarding the risk assessment, Category I or Category II substantiation requires Respondent to list the substantiated perpetrator on the Michigan's Central Registry. Central Registry placement is evaluated in terms of the legal circumstances present at the time of the listing, and after a thorough review of the record, the evidence presented would indicate that Respondent acted appropriately at that time based upon the law and guidelines which govern the situation.

Accordingly, after reviewing the hearing record in full and applicable law, it is the ruling of this ALJ that 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's name 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**.



Vicki L. Armstrong
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, 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 [REDACTED]

[REDACTED]

Michigan Administrative Hearing System

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]