



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.: 16-018713

██████████,
Petitioner

Agency Case No.: ██████████

v

Case Type: Expunction

██████████ County DHHS,
Respondent

_____ /

**Issued and entered
this 16th day of June 2017
by Vicki L. Armstrong
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This proceeding commenced with the issuance of an Order Following Prehearing on ██████████, based on notification from the Jackson County Department of Health and Human Services (Department), Respondent, that it would not expunge the name or identifying information of ██████████, Petitioner, from the Michigan Child Abuse and Neglect Central Registry (Central Registry) for referral or complaint date of ██████████, and ██████████. The actions 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 Complaint, with a complaint date of ██████████.

2. Respondent's Exhibit B is a copy of the CPS Investigation Report, dated [REDACTED].
3. Respondent's Exhibit C is a copy of the screen print of allegations, dated [REDACTED].
4. Respondent's Exhibit D is a copy of the CPS Complaint with a complaint date of [REDACTED].
5. Respondent's Exhibit E is a copy of the CPS Investigation Report, dated [REDACTED].
6. Respondent's Exhibit F is a copy of a screen print of allegations, dated [REDACTED].
7. Respondent's Exhibit G is a copy of the Family Risk Assessment of Abuse/Neglect, case number [REDACTED], dated [REDACTED].
8. Respondent's Exhibit H is a copy of the Family Risk Assessment of Abuse/Neglect, case number [REDACTED], dated [REDACTED].
9. Respondent's Exhibit I is a copy of the Case Report Summary from the [REDACTED] Public Safety Department, dated [REDACTED].

Petitioner testified on her own behalf and did not call any witnesses or offer any 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 Child A (DOB [REDACTED]), who resided in [REDACTED], Michigan, at times relevant to this matter. [Resp. Exh. D, p 1].
2. [REDACTED] (DOB [REDACTED]), was Petitioner's live-together-partner (LTP), and the biological father of Child B (DOB [REDACTED]), who resided with Petitioner at times relevant to this matter. [Resp. Exh. A, p 1; Resp. Exh. D, p 1].
3. On [REDACTED], Respondent received a complaint alleging that Child B was hit by [REDACTED]. It was alleged that Child B had bruising on his face, where [REDACTED] had hit him, in addition to bruising on his temple area, face and chest, and a slight black eye. It was reported that [REDACTED] struck Child B because Child B wanted to be with his mother. It was alleged that Petitioner knew that [REDACTED] was hitting Child B and removed her daughter, Child A, from the area. [Resp. Exh. B, p 4].
4. Petitioner credibly testified at the hearing in the above captioned matter. Petitioner reported being in the home at the time of the incident and of hearing [REDACTED] strike Child B and seeing Child B's bloody nose. Petitioner reported that she feared [REDACTED] was going to strike Child B because Child B was crying, so she removed her daughter, Child A, from the situation. [Testimony of [REDACTED]].
5. On [REDACTED], CPS Investigator [REDACTED] interviewed [REDACTED]-year-old Child B. Child B reported that his father, [REDACTED], hit him in the face and made his nose bleed. CPS Investigator [REDACTED] observed Child B had some red marks on his left face near his temple and red marking under his left eye with slight bruising. Child B did not have a black eye and there were no marks or bruises on his chest. [Resp. Exh. B, p 10].
6. On [REDACTED], Petitioner was interviewed by CPS Investigator [REDACTED], and [REDACTED] Police Detective, [REDACTED]. Petitioner stated that [REDACTED] always uses physical force on Child B which usually consists of hitting him on the butt and face. Petitioner also stated that she had used cocaine with [REDACTED] in the presence of Child A. Petitioner reported an incident where [REDACTED] used cocaine on a dinner plate and Child A almost got into the residue because the plate was within reach of Child A and in the area of where Child A's snacks were kept. Petitioner also disclosed that [REDACTED] deals cocaine and uses her phone and car to conduct the deals. Petitioner stated that she drives [REDACTED] to conduct cocaine deals with Child A in the back seat. [Resp. Exh. B, p 11].
7. On [REDACTED], CPS received a complaint alleging that Petitioner and [REDACTED] use cocaine in the presence of Child A. The allegation indicated that Child A almost got into a plate with cocaine residue on it because it was

- kept right next to Child A's snacks in the home. There were also allegations that Petitioner and ██████ sell cocaine out of the home and have made multiple drug deals with Child A present. [Resp. Exh. E, p 20].
8. During the hearing in the above captioned matter, Petitioner admitted to the allegations of the ██████, CPS complaint. [Testimony of ██████].
 9. On ██████, CPS Investigator ██████ interviewed Child A using the forensic protocol. Child A reported that ██████ would hit Child B on the butt and on the face. Child A stated that the last time ██████ did it, Child B's nose was bleeding. Child A reported that she knew Child B's nose was bleeding because she saw the blood on his face. Child A stated that she was with her Mom in another room when it happened. [Resp. Exh. B, pp 12-13].
 10. On ██████, CPS Investigator ██████ and Detective ██████, interviewed ██████ at the ██████ County Jail. ██████ stated he smacked Child B on the left side of his face with an open hand because Child B was crying like a girl. ██████ denied that Child B's nose was bleeding from the smack and stated that he just always gets bloody noses. [Resp. Exh. B, pp 13-14].
 11. On ██████, during the interview with CPS Investigator ██████ and Detective ██████, ██████ reported he used between 3-5 grams of cocaine every day for the past year and a half. ██████ stated that he had used cocaine with Petitioner in the presence of Child A and Child B. ██████ admitted to selling cocaine, and picking up and dropping off cocaine while Child A was in the car. ██████ stated that when he and Petitioner used cocaine, it was never in front of Child A, although Child A was in the home. [Resp. Exh. B, p 14].
 12. On ██████, Respondent placed Petitioner's name on the Central Registry as a perpetrator of Improper Supervision. [Resp. Exh. D, p 30].
 13. On ██████, Respondent placed Petitioner's name on the Central Registry as a perpetrator of Failure to Protect. [Resp. Exh. B, pp 4, 14].

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is on the Respondent to prove, by a preponderance of the evidence, that relevant and accurate evidence of abuse or neglect exists and that the placement of Petitioner's name on the Central Registry was appropriate.

As a trier of fact, the Administrative Law Judge must determine the weight, the effect and the value of the evidence. The Administrative Law Judge must consider and weigh the testimony of all witnesses and evidence.

The protective services hearing process is a quasi-judicial, contested case proceeding required by law to determine if a petitioner's name must remain on the Central Registry as a perpetrator of abuse and/or neglect.

When a hearing is requested, the presiding Administrative Law Judge conducts a *de novo* review, in which the Respondent has the threshold burden to prove, by a preponderance of the evidence, that a petitioner has committed child abuse and/or child neglect as defined by the Child Protection Law, *supra*. If this threshold burden is met, then the Respondent must also prove that the matter has been properly placed on the Central Registry in conjunction with the provisions of the Child Protection Law, MCL 722.628d.

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

The Department's policy, as set forth in the Protective Services Manual (PSM), defines "failure to protect" as "[k]nowingly 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."

The Department's policy defines "improper supervision" 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." The term, "threatened harm" means a child being found in a situation where harm is "likely to occur" based on a current or historical circumstance. PSM 711-5, p 6 (5/1/2016).

Based on the above findings of fact and Petitioner's own testimony, 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 perpetrated substantiated 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 each time, based upon the law and guidelines which govern the situation.

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 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 referrals or complaint dates of [REDACTED], and [REDACTED].

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



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 16th day of June 2017.

Brianna Beck _____

Brianna Beck

Michigan Administrative Hearing System

[REDACTED]

[REDACTED]

[REDACTED]