



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

IN THE MATTER OF:

MOAHR Docket No.: 19-002165

██████████,
Petitioner

Agency Case No.: ██████████

v

Case Type: Expunction

**Barry County DHHS,
Respondent**

_____ /

**Issued and entered
this 15th day of July 2019
by Vicki L. Armstrong
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This is a proceeding held pursuant to Section 7 of the Child Protection Law, 1975 PA 238, as amended, MCL 722.621 *et seq.* and in accordance with the Michigan Administrative Procedures Act, 1969 PA 306, as amended (APA), MCL 24.201 *et seq.*

The purpose of this hearing is to determine whether the record of child abuse or child neglect for ██████████, Petitioner, should be amended or expunged from the Michigan Child Abuse and Neglect Central Registry (Central Registry) for complaints or referral dates of ██████████, 2016 and ██████████, 2018.

The record reflects that on ██████████ 2019, the Petitioner submitted a request for amendment or expunction from the Central Registry, and that on March 5, 2019, the Barry County Department of Health and Human Services, Respondent, denied the Petitioner's request.

On March 13, 2019, Respondent filed a Hearing Summary as request for hearing, dated March 5, 2019, with the Michigan Office of Administrative Hearings and Rules. On March 22, 2019, the Michigan Office of Administrative Hearings and Rules issued a Notice of Hearing scheduling a hearing for June 6, 2019 at 9:00 a.m. in Grand Rapids, Michigan.

The Notice of Hearing was served by mail to the parties at their last known addresses. No request for adjournment was received from either party as to the June 6, 2019 hearing date. The Notice of Hearing mailing was not returned by the post office.

On June 6, 2019, the hearing was held as scheduled in Grand Rapids, Michigan, by the undersigned Administrative Law Judge. Noel Gladding and Ashley Wren, Children's Protective Services (CPS) Investigators, appeared as authorized representatives on behalf of the Respondent. Neither the Petitioner, nor an attorney or authorized representative appeared on his behalf at the hearing.

After the undersigned Administrative Law Judge waited over 30 minutes from the scheduled hearing time, the hearing proceeded in Petitioner's absence pursuant to Section 72(1) of the APA and Rule 134 of the Administrative Hearing Rules for the Michigan Office of Administrative Hearings and Rules. Respondent further moved for a decision by default against Petitioner pursuant to Section 78(2) of the APA, MCL 24.278(2). Sections 72(1) and 78(2) of the APA and Rule 134 state as follows:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.272(1). (Emphasis supplied.)

Sec. 78. (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.278(2). (Emphasis supplied.)

Rule 134. (1) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.

(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings. 2015 Mich Admin Code, R 792.10134. (Emphasis supplied).

The Respondent's motion for a default judgment was granted pursuant to Section 78(2) of the APA as to the complaint dates of May 12, 2016 and October 29, 2018 at issue.

As a result of the default, the factual and legal allegations contained in the Respondent's Hearing Summary dated March 5, 2019, were deemed as true and proven. No witnesses were presented. The following exhibits were offered by the Respondent and admitted into the record as evidence:

1. Respondent's Exhibit A is a copy of the CPS Investigation Report, dated June 13, 2016.
2. Respondent's Exhibit B is a copy of the undated Risk Assessment Narratives.
3. Respondent's Exhibit C is a copy of the Certified Mail Receipt, received June 29, 2016.
4. Respondent's Exhibit D is a copy of the Notice of Action and Rights, dated June 20, 2016.
5. Respondent's Exhibit E is a copy of the Child Protection Law, MCL 722.621-722.638.
6. Respondent's Exhibit F is a copy of the Children's Protective Services Manual (PSM) 711-5, Department Responsibilities and Operational Definitions, dated May 1, 2016
7. Respondent's Exhibit G is a copy of PSM 713-11, Risk Assessment, dated July 1, 2015.
8. Respondent's Exhibit H is a copy of PSM 713-01, CPS Investigation – General Instructions and Checklist, dated May 1, 2016.
9. Respondent's Exhibit I is a copy of PSM 713-10, CPS Investigation Report, dated May 1, 2016.
10. Respondent's Exhibit J is a copy of PSM 713-13, Child Abuse and Neglect Central Registry (CA/NCR), dated April 1, 2015.
11. Respondent's Exhibit K is a copy of the CPS Investigation Report, dated November 29, 2018.
12. Respondent's Exhibit L is a copy of the undated Safety Assessment.
13. Respondent's Exhibit M is a copy of the undated Risk Assessment Narratives.
14. Respondent's Exhibit N is a copy of the Notice of Placement on Central Registry, dated December 3, 2018.

15. Respondent's Exhibit O is a copy of PSM 713-01, CPS Investigation – General Instructions and Checklist, dated May 1, 2016.

16. Respondent's Exhibit P is a copy of PSM 713-10, CPS Investigation Report, dated May 1, 2016.

17. Respondent's Exhibit Q is a copy of PSM 713-13, Child Abuse and Neglect Central Registry (CA/NCR), dated April 1, 2015.

The record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The issue presented in this matter is whether the Petitioner's name and identifying information should be removed from the Central Registry for complaints or referral dates of May 12, 2016 and October 29, 2018. The law applicable to amendment or expunction from the Central Registry is set forth in Section 7 of the Child Protection Law, *supra*, MCL 722.627.

FINDINGS OF FACT

Based on the record as a whole and the default ruling entered against Petitioner, the following findings of fact are established in this matter:

1. On or about June 20, 2016, the Respondent placed the name and/or identifying information of [REDACTED], Petitioner, on the Central Registry as a perpetrator of "Improper Supervision" for the complaint date of May 12, 2016, following a Children's Protective Services investigation with a "high" or Category II risk assessment. [Resp. Exh. A, D].
2. On or about December 3, 2018, the Respondent placed the name and/or identifying information of the Petitioner on the Central Registry as a perpetrator of "Improper Supervision" for the complaint date of October 29, 2018, following a Children's Protective Services investigation with a "high" or Category II risk assessment. [Resp. Exh. K, N].
3. On February 4, 2019, the Petitioner submitted a request for expunction from the Central Registry for both the June 20, 2016 and October 29, 2018 complaint dates. [Hearing Summary].
4. On or about March 5, 2019, the Respondent reviewed its pertinent case file and upheld its initial position that the Petitioner's name and/or identifying information was appropriately placed on Central Registry for Improper Supervision on June 20, 2016 for complaint date of May 12, 2016 and on December 3, 2018 for complaint date of October 29, 2018. [Hearing Summary; Resp. Exh. A, D, K, N].

5. On March 13, 2019 the matter was referred for hearing. [Hearing Summary].
6. On March 22, 2019, a Notice of Hearing was issued, which scheduled the hearing on June 6, 2019 at 9:00 a.m. [Notice of Hearing].
7. The Petitioner did not appear and give evidence at hearing to rebut the evidence presented by Respondent in the Hearing Summary with attachments.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan's Michigan Pleading and Practice 2nd ed.*, Section 60.48, p 230. A default having been granted against Petitioner, the factual and legal allegations set forth in the Hearing Summary are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true and proven. *Smith v Lansing School Dist*, 428 Mich 248; 406 NW2d 825 (1987).

At a hearing such as the present matter, Respondent has the initial burden of going forward with evidence, as well as the burden of proof to establish by a preponderance of evidence that the report of child abuse or child neglect was properly substantiated and categorized under the Child Protection Law, *supra*. Once child abuse or child neglect is initially established, the Petitioner must go forward with evidence that the record should be amended or expunged from the Central Registry on the grounds that the report or record is not relevant or accurate evidence of child abuse or child neglect

The pertinent sections of the APA and administrative rule for Michigan Office of Administrative Hearings and Rules proceedings pertaining to entry of default state as follows:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.272(1).

Sec. 78. (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.278(2). (Emphasis supplied).

Rule 134. (1) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.


(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings. 2015 Mich Admin Code, R 792.10134. (Emphasis supplied).

Based on the above findings of fact, it is concluded that Respondent has established by a preponderance of the evidence that the Petitioner's name on the Central Registry under the Child Protection Law, *supra*, for complaint dates of May 12, 2016 and October 29, 2018, should not be amended or expunged.

ORDER

NOW THEREFORE, IT IS ORDERED that:

Respondent's denial decision as to the Petitioner's placement on the Central Registry for complaint dates of May 12, 2016 and October 29, 2018, are hereby AFFIRMED.



Vicki L. Armstrong
Administrative Law Judge

NOTICE: Within 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 Office of Administrative Hearings and Rules (MOAHR), on its own motion or on request of a party, may order rehearing or reconsideration within 60 days after the date of mailing of this Decision and Order.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last-known addresses in the manner specified below, this 15th day of July 2019.

Nikki M. Robison

Nikki M. Robison
Michigan Office of Administrative Hearings
and Rules

Via Electronic Mail

Barry County DHHS
Hearings Coordinator
430 Barfield Dr
Hastings, MI 49058

Kevin Bryan
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235 S Grand Ave Ste 510
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Via First Class Mail

[REDACTED]
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