



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.: 18-007796-RECON

██████████

Petitioner

Agency Case No.: ██████████

Case Type:

Expunction

v

**Macomb County DHHS,
Respondent**

/

**Issued and entered
this 29th day of June 2020
by: Zainab A. Baydoun
Administrative Law Judge**

ORDER DENYING REQUEST FOR REHEARING AND/OR RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration filed on ██████████ 2020 by Petitioner, ██████████ of the Decision and Order issued on January 14, 2020, by the undersigned at the conclusion of the two day hearing conducted on December 6, 2018 and continued to March 27, 2019 in the above-captioned matter.

A rehearing is a full hearing, which is granted when the original hearing record is inadequate for judicial review or there is newly discovered evidence that could affect the outcome of the original hearing. MCL 24.287(2), Protective Services Manual (PSM) 717-3 (June 2018), p.8. A reconsideration is a paper review of the facts, law and any new evidence or legal arguments. Reconsideration of an ALJ's Decision and Order may be granted when the original hearing record is adequate for judicial review and a rehearing is not necessary, but a party believes the ALJ failed to accurately address all the issues. PSM 717-3, pp. 8-9.

A reconsideration may be granted only under the following circumstances: if newly discovered, relevant evidence is presented that could affect the outcome of the original hearing; if there was a misapplication of policy or law in the hearing decision that led to a wrong conclusion; or if the administrative law judge failed to address, in the hearing decision, relevant issues raised in the hearing request. PSM 717-3, pp. 8-9. A request for reconsideration which presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted. Mich Admin Code, R 792.10135. The Michigan Office of Administrative Hearings and Rules (MOAHR) determines if a rehearing or reconsideration will be granted. PSM 717-3, p. 8.

In the instant case, Petitioner requested an administrative hearing asking to have his name expunged from the Michigan Child Abuse and Neglect Central Registry (Central Registry) for a Children's Protective Services (CPS) complaint date of April 22, 2013, which found that he was the perpetrator of sexual abuse against a child. Petitioner also requested amendments to Children's Protective Services Investigation Reports (DHS – 154) and/or records for April 22, 2013 and August 17, 2013 CPS complaint dates pursuant to Protective Services Manual (PSM) 717 – 2. The action concerned Petitioner's alleged violation of the Child Protection Law, 1975 PA 238, as amended, MCL 722.621 *et seq.* (Act).

In addition to the request for expunction from the Central Registry for the April 22, 2013 complaint date, Petitioner sought various amendments to the CPS Investigation Reports to correct what he asserted were errors in fact or missing information in the two CPS Investigation Reports with complaint dates of [REDACTED] 2013 and [REDACTED] 2013. Among other requests, Petitioner argued that the dispositional findings section of the [REDACTED] 2013 CPS Investigation Report should be amended to reflect that there is no preponderance of the evidence of sexual abuse, that Petitioner should not have been substantiated for sexual abuse and that he should not have been identified on the Central Registry, as the evidence does not support such placement. He also requested that the report be amended to show that his name has been expunged from the Central Registry.

In the [REDACTED] 2020 Decision and Order, the undersigned found that while it was possible that sexual abuse may have occurred as alleged by Child A, because during the hearing, Respondent failed to establish that Child A's interview was conducted consistent with the forensic interviewing protocol, as Respondent elected not to call Detective Abro who conducted the interview, or Child A as witnesses, the evidence presented by Respondent during the administrative hearing was insufficient to establish that Petitioner's name was properly placed on the Central Registry. Petitioner's request for expunction was granted and Respondent was ordered to expunge Petitioner's name from the Central Registry for the [REDACTED] 2013 CPS complaint date. In accordance with PSM 717-12, Respondent was further ordered to issue an addendum to the corresponding [REDACTED] 2013 CPS Investigation Report to reflect that Petitioner's name has been expunged from the Central Registry.

With respect to Petitioner's remaining requests for amendment, the undersigned found that Respondent was not legally obligated to make any of the additional amendments or corrections to the [REDACTED] 2013 and [REDACTED] 2013 CPS Investigation Reports requested by Petitioner, as Petitioner did not establish that the reports contained additional inaccurate information or that they were otherwise completely spurious and unfounded, thereby warranting destruction. See PSM 717-2.

In the request for rehearing and/or reconsideration, Petitioner indicated that he no longer seeks the amendments to the [REDACTED] 2013 CPS Investigation Report previously requested and now, requests reconsideration of only one amendment to the [REDACTED] 2013 CPS Investigation Report relating to the Dispositional Findings section of

the report. He argues that continuing to allow the Dispositional Findings in the report to indicate that the investigation found a preponderance of evidence to support the allegation of sexual abuse but ordering that the CPS Investigation Report be amended to reflect his removal from Central Registry allows the CPS case file to contain inaccurate information, errors in fact and information that can be corrected.


Petitioner's request for rehearing and/or reconsideration is not entirely clear however, as the undersigned ALJ ruled in Petitioner's favor and granted his request for expunction from the Central Registry, which thereby removes the substantiation of sexual abuse from the Department's Central Registry. Petitioner asserts that this action is insufficient, as the Dispositional Findings section of the report should be further amended to indicate that the Department's investigation failed to obtain the necessary evidence required to find that there was a preponderance of the evidence to support that Petitioner sexually abused Child A.

As indicated in the Decision and Order, the undersigned ALJ did not make a factual finding or conclusion that sexual abuse did or did not occur as alleged by the child, but rather, a legal conclusion was made regarding the Central Registry listing based on the evidence presented during the administrative hearing. Upon review, the removal of Petitioner's name from the Central Registry and the corresponding addendum to the CPS Investigation Report to reflect that Petitioner's name has been expunged from the Central Registry render any additional amendment requests unnecessary, as the CPS Investigation Report is not a public record and further that, Petitioner's substantiation for sexual abuse in connection with the [REDACTED] 2013 CPS complaint no longer exists as it has been legally expunged.

Petitioner does not allege that the original hearing record is inadequate for purposes of judicial review or that there is newly discovered evidence that could affect the outcome of the original hearing. Therefore, Petitioner has failed to establish a basis for a rehearing. Furthermore, a full review of Petitioner's request fails to demonstrate that there was a misapplication of policy or law in the hearing decision that led to a wrong conclusion. Additionally, Petitioner did not establish that the ALJ's Decision and Order failed to address relevant issues raised in the hearing request, as the issue of whether to expunge Petitioner's name from the Central Registry was properly considered and thoroughly addressed, as were all of Petitioner's requests for amendment to the CPS Investigation Reports. The arguments raised by Petitioner in his request for rehearing and/or reconsideration were all considered by the undersigned during the administrative hearing and referenced in the Decision and Order. Petitioner is essentially relitigating the matter presented at the hearing before the undersigned ALJ but fails to articulate any basis described above that would warrant the granting of a rehearing or reconsideration. Mere disagreement with the Decision and Order does not permit a rehearing and/or reconsideration of this matter.

NOW THEREFORE, IT IS ORDERED that Petitioner's request for rehearing and/or reconsideration is **DENIED** and this matter is hereby **DISMISSED**.

IT IS SO ORDERED.




Zainab A. Bayddun
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules.

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 29th day of June 2020.



Tammy L. Feggan, Legal Secretary
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