



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.: 18-013901-RECON

██████████

Petitioner

Agency Case No.:

██████████

v

Case Type:

Expunction

**Sanilac County DHHS,
Respondent**

_____ /

**Issued and entered
this 19th day of November 2019
by: Lynn M. Ferris
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 by Petitioner ██████████ of the Hearing Decision issued by the undersigned at the conclusion of the hearing conducted on ██████████ 2019 and mailed on ██████████ 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 (December 2016), p. 8.

A reconsideration is a paper review of the facts, law and any new evidence or legal arguments. PSM 717-3, p. 8. Reconsideration of a 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, p. 8. 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. See PSM 717-3, p. 8. 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. MOAHR determines if a rehearing or reconsideration will be granted. PSM 717-3, p. 8.

In this case, Petitioner requested a hearing to have her name expunged from the Michigan Child Abuse and Neglect Central Registry (Central Registry) in connection with Child Protective Services (CPS) complaint dated [REDACTED] 2018. In the [REDACTED] 2019 Decision and Order, the undersigned determined that there was a preponderance of evidence to demonstrate physical neglect with respect to the conditions of the home where she was living with her live together partner and that the Risk Assessment was properly scored demonstrating a Neglect Risk score of 7 resulting in a High risk which required that Petitioner's name be placed on the central registry.

In the request for rehearing or reconsideration, Petitioner's Petition For Review dated [REDACTED] 2019, the Petitioner makes several arguments for rehearing/reconsideration which are addressed hereafter. Petitioner argues that she never received a trial to find out if she should be placed on the central registry, was never charged with anything and just got placed on the central registry. The procedures resulting in Petitioner's placement on the central registry did not require a hearing or trial but instead required an investigation be conducted by Children's Protective Services and a determination be made by CPS based on that investigation, as to whether the Petitioner's name should be placed on the Central Registry. At the hearing conducted on February 20, 2019, the Petitioner participated in a de novo hearing conducted by the undersigned where the Respondent Department, and its witness, presented the factual basis for their determination that Petitioner was properly placed on the Central Registry for Child Neglect, due to physical neglect of Child A, due to the unsafe conditions found in Petitioner's home after completion of its investigation of the [REDACTED] 2019 complaint. During the hearing, Petitioner was afforded her due process rights to cross examine the Respondent's witness and present testimony and arguments on her behalf as to why the Respondent's determination resulting in her placement on the Central Registry was incorrect. The standard of preponderance of evidence was explained and the Petitioner was afforded opportunities to review the evidence and ask questions of the department representative and its witness. In addition, the Petitioner presented her own testimony to rebut the Respondent CPS' evidence.

The Petitioner's Petition for Review also states as grounds for reconsideration that the risk assessment is all based on opinion, "that the caseworker who conducted the CPS Investigation blew things out of proportion or just made things up". Petitioner cites no example of evidence that the caseworker made up, no new evidence was presented by Petitioner, and Petitioner also seeks to revisit the findings of the risk assessment which were fully reviewed and examined at the hearing. As such, the undersigned has determined, after a full review of the record, that Petitioner's arguments are not supported by the record; as the risk assessment was fully reviewed at the hearing and the CPS investigator's testimony was based upon her observations of Petitioner's home and the facts she used to determine that home was unsafe for the reasons listed in the Hearing Decision. The fact that the Petitioner disagrees with the conclusion of the risk assessment is not a basis for reconsideration.

Petitioner also argues that the Petition filed by Respondent CPS seeking removal of Child A was guilty by association. This argument is without merit for the following

reasons. Petitioner was not a named party in the Petition which resulted in Child A being removed from the home where Petitioner resided. As explained at the hearing and in the Hearing Decision, the Petitioner was not a party to the removal proceedings and as such the proceeding did not cause her to be placed on central registry; rather it was the Risk Assessment score, which was scored as a High risk, that resulted in the Petitioner's placement on the Central Registry, not the Court Removal Proceedings. As was explained at the hearing, the Department's investigation determined that Petitioner was found to be a perpetrator of Child Neglect for physical neglect due to the unsafe conditions of the home where she resided, which made the home unsafe for an [REDACTED] month old child. The parents of the child, who lived in the home with Petitioner were placed on central registry due to improper supervision of Child A and the unsafe conditions of the home, resulting in an injury to the child. The parents of Child A were placed on central registry when the Petition, filed by the Respondent, was granted by the court and because the court took jurisdiction over Child A, making the child a temporary court ward due to the parents' improper supervision and physical neglect. These proceedings were not used to place Petitioner on the Central Registry.

Petitioner also asserts that her request for a continuance was improperly denied. A review of the record indicates that Petitioner's live together partner stated that he was unable to obtain from the circuit court records documents that he asserted would demonstrate that the allegations of the Petition, as regards the unsafe conditions in the home, were dropped as a basis for the court's jurisdiction over the child. He further stated that the Circuit Court would not release the records to him as he was not a party to the proceedings and the attorney they called did not return his call. Although this argument was made by [REDACTED] the Petitioner's partner, it is considered as made by her as well due to it relating to the unsafe conditions in the home. The Order of Adjudication admitted as Respondent's Exhibit J, without objection by Petitioner, provides that the Court took jurisdiction over Child A making him a temporary court ward. The Court in the Order of Adjudication, based its jurisdiction in part on the unsafe housing conditions alleged in the CPS Petition and referred to in the Order of Adjudication as paragraph number 4, 4(a) and 4(i) of the Petition which the parties to the proceeding, Petitioner's son and his son's girlfriend made a no contest plea with respect to these allegations in the Petition. Thus, the Order of Adjudication does not support the Petitioner's claim that court documents would demonstrate unsafe conditions were not a basis for the court assuming jurisdiction of the child. No new or additional evidence was presented to support this claim in the Petition For Review.

The Petitioner also further argues that she did not have an opportunity to review the contents of her file before the hearing. The Department did not provide its exhibits to the Petitioner prior to the hearing, however, the undersigned afforded the Petitioner an opportunity to review the proposed exhibits prior to starting the hearing. The Petitioner did not request that the hearing be adjourned so she could have more time to review the exhibits. During the hearing, the undersigned afforded Petitioner additional time to review documents and also stated that she had no matters in the afternoon and that Petitioner could take as much time as necessary to review documents. In addition all of

the Exhibits offered by the Respondent CPS were admitted without an objection by Petitioner that she had inadequate time to review the documents.

The Petitioner did object to the admission of the medical records of Child A's exam at the hospital, on the basis that the doctor may have been influenced in his assessment by the presence of the CPS worker, and argued that if CPS had not been present the doctor may not have come up with the same evaluation. The Department provided a copy of the doctor's report to the Petitioner at the hearing. The Petitioner's claim that she had inadequate time to review the doctor's report would not have changed the facts presented with respect to the condition of Petitioner's home, which is the issue in this case, and whether the conditions were unsafe and unsanitary putting the child at risk of harm. The medical records were used to establish physical neglect as it regards Child A's parents, due to bruising of the child as a result of a fall and head injury, a diaper rash and flattened hair at the back of the child's head as well as the fact that the child's parents' story was inconsistent. The undersigned overruled the Petitioner's [REDACTED] objection as to the medical findings but indicated that the fact of CPS presence would be considered, however, the injury and other findings were relevant. The medical report was not used to establish alleged physical neglect of the Child by Petitioner as other evidence was also presented to support the unsafe and unsanitary conditions in the home. The Petitioner's objection that the presence of CPS influenced the outcome is an argument that goes to the weight the evidence should be given in light of the surrounding facts not whether the report was relevant. The report was relevant to the facts as the child was taken to the hospital to be examined due to the injury observed by CPS and unsafe and unsanitary conditions in the home. However, without the injury CPS indicated the child would not have been removed from the home, however, the home conditions would have been required to be addressed by the based upon the results of the CPS investigation.

Petitioner's final argument is based upon the risk assessment and that it is based upon the CPS investigator's opinion. The risk assessment contains questions that are factual in nature and questions that require judgments be made involving opinion and observations made by the CPS worker. The risk assessment determines the future risk of harm to the minor child given the household circumstances, including members of the household and other factors affecting risk. The Petitioner's argument is essentially that the CPS investigator's opinion was incorrect, however based upon the assessment of the facts, testimony and documentary evidence presented, it was determined that the risk assessment was correctly scored. Petitioner also expressed disagreement with the risk assessment outcome because the child's mother was receiving treatment for mental health issues and points were assessed associated with her mental health but should not have been assessed to her as a member of the household. As a matter of law a risk assessment is required to be completed by the CPS investigator so that future risk to the minor child can be assessed. In circumstances such as in this case, the entire household is assessed as a group in one risk assessment as required by Department policy as it is that household where the child is living and the circumstances and conditions which determines the level risk.

The remainder of Petitioner's arguments are without merit as they present the same issues previously ruled on, either expressly or by reasonable implication which were addressed at the hearing by Petitioner.

In conclusion, the Petitioner's request for rehearing is denied. A rehearing is only 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. No newly discovered evidence was presented and the hearing record is adequate for judicial review. A reconsideration may only be granted if newly discovered relevant evidence is presented that could affect the outcome of the original hearing, no newly discovered evidence has been presented by Petitioner. Reconsideration may also be granted if there was a misapplication of policy or law in the hearing decision leading to a wrong conclusion; Petitioner did not allege a misapplication of law warranting reconsideration. Reconsideration may also be granted if the administrative law judge failed to address in the hearing decision, relevant issues raised in the hearing request; Petitioner did not raise any relevant issues that were raised in the hearing request that were not addressed. Therefore, Petitioner [REDACTED] has not established a basis for reconsideration.

Accordingly, the request for rehearing and/or reconsideration is **DENIED**.

IT IS SO ORDERED.

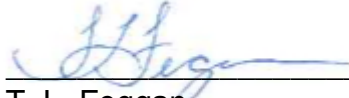


Lynn M. Ferris
Administrative Law Judge

NOTICE: Within 60 days after the date of mailing of this Order Denying Request for Rehearing and/or Reconsideration, a Petition for Review may be filed in a court of proper jurisdiction.

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 19th day of November, 2019.



T. L. Feggan
**Michigan Office of
Administrative Hearings and Rules**

Via Email:

Kevin Bryan
DHHS Children's Protective Services

Sanilac County DHHS
Hearings Coordinator

Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]