



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.: 18-014137-RECON**

██████████

**Petitioner**

**Agency Case No.:** █

**Case Type:**

**Expunction**

**v**

**Macomb County DHHS,  
Respondent**

\_\_\_\_\_ /

**Issued and entered  
this 27<sup>th</sup> day of February 2020  
by: Alice C. Elkin  
Supervising Administrative Law Judge**

**ORDER DENYING REQUEST FOR REHEARING AND/OR RECONSIDERATION**

This matter is before the undersigned Supervising Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration by Petitioner, ██████████. Petitioner's attorney disputes the Order Granting Respondent's Motion for Summary Disposition and Canceling the ██████████, 2019 Hearing issued by ALJ Jacquelyn McClinton on ██████████ 2019 in the above-captioned matter. Since issuing the Order, ALJ McClinton left employment with the Michigan Office of Administrative Hearings and Rules (MOAHR). Petitioner's request for rehearing and/or reconsideration has been reviewed by the undersigned Supervising ALJ and a decision rendered in accordance with Mich Admin Code, R 792.101106.

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 (██████ 2018), 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 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 rehearing or 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. 9.

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] 29, 2018. Respondent, Macomb County Department of Health and Human Services, moved for summary disposition on [REDACTED] 4, 2019, contending that there was no issue of material fact and Petitioner failed to state a claim upon which relief could be granted. On [REDACTED] 13, 2019, ALJ McClinton granted the motion and canceled Petitioner's hearing, finding that, due to Petitioner's plea resulting in the circuit court issuing an Order of Adjudication taking Petitioner's children into the court's custody under MCL 712A.2b, Petitioner was required to remain on the Central Registry and summary disposition for Respondent was appropriate.

In the request for rehearing or reconsideration, Petitioner's counsel does not dispute that there was an Order of Adjudication issued by the circuit court as a result of Petitioner's plea resulting in the children's placement in the court's jurisdiction. Rather, counsel argues that (1) CPS improperly found that Petitioner was the perpetrator of child abuse and/or neglect as evidenced by the fact that it never sought to remove the children from Petitioner's care; (2) Petitioner's placement on the Central Registry interfered with her employment and resulted in a violation of the due process clause of the 14<sup>th</sup> Amendment of the United States Constitution; (3) Petitioner was not advised that, as a consequence to her plea to the circuit court on the child protective proceedings petition, she would be placed on the Central Registry; and (4) where Petitioner timely requested an expunction hearing, she is statutorily entitled to a hearing.

While an individual placed on the Central Registry may request a hearing to dispute the listing, as ALJ McClinton pointed out, MCL 722.627(7) expressly states that if a court takes jurisdiction of a child under MCL 712A.2, the Department must place the name of the perpetrator of the child abuse or child neglect on the Central Registry. Petitioner's counsel does not dispute that, based on Petitioner's plea and a preponderance of the evidence, the circuit court concluded in the [REDACTED] 2018 Order of Adjudication that there was a statutory basis under MCL 712A.2(b) to take Petitioner's children into the court's custody. Because of the court's order, Respondent was required to maintain Petitioner's name on the Central Registry. Accordingly, summary disposition was properly granted to Respondent pursuant to Mich Admin Code, R 792.10129(1).

Petitioner's contention that she was not advised of the consequences of the circuit court plea did not provide a basis for administrative hearing. Further, under the [REDACTED] 2019 Delegation of Authority to MOAHR by the Director of the Department of Health and Human Services, ALJs have no authority to make decisions concerning the

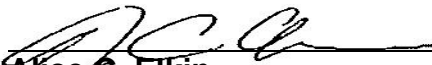
constitutionality of Department policies. Thus, the challenge to the policy as a violation of due process likewise did not provide a basis for hearing.

A full review of Petitioner's request fails to demonstrate that ALJ McClinton misapplied manual policy or law in the Order Granting Respondent's Motion For Summary Disposition; committed typographical, mathematical, or other obvious errors in the Order that affected Petitioner's substantial rights; or failed to address other relevant issues raised in the hearing request or in the rehearing and/or reconsideration request. Therefore, Petitioner has not established a basis for reconsideration. Furthermore, because Petitioner does not present any basis for finding that there is newly discovered evidence (or evidence that could not have been discovered at the time of the hearing had a reasonable effort been made to do so), there is no basis for a hearing where the summary disposition was properly granted due to a lack of claim upon which relief could be granted and no issue of material fact.

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

**IT IS SO ORDERED.**


ACE/tlf

  
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**Alice C. Elkin**  
Supervising 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 60 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 27<sup>th</sup> day of February 2020.



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