



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

IN THE MATTER OF:

MAHS Docket No.: 19-001196

██████████,
Petitioner

Agency Case No.: ██████████

v

Case Type: Expunction

**Ingham County DHHS,
Respondent**

_____ /

**Issued and entered
this 19th day of April 2019
by: Landis Lain
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This proceeding commenced with the issuance of a Notice of Hearing on February 25, 2019 based on notification from the Ingham County Department of Health and Human Services, Respondent that it would not expunge the name or identifying information of Amber Smith, Petitioner, from the Michigan Child Abuse and Neglect Central Registry for referral or complaint date of April 27, 2018. The action 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 March 26, 2019. Petitioner represented herself at the proceeding. Petitioner's friend, ██████████, appeared as a witness for Petitioner.

Jessica Lundy, Children's Protective Services Supervisor appeared as Authorized Hearings Representative on behalf of Respondent. Chis Blood, Children's Protective Services Supervisor appeared as a witness for the Department.

The following exhibits were offered by Respondent and admitted into the record as exhibits:

1. Respondent's Exhibit A is [a copy of] the Children's Protective Services Investigation Report dated April 27, 2018.

2. Respondent's Exhibit B is [a copy of] several Police Reports.
3. Respondent's Exhibit C is [a copy of] a July 31, 2018, Psychological Evaluation of JS (date of birth October 25, 2006).
4. Respondent's Exhibit D is [a copy of] a Family Risk Assessment of Abuse/Neglect.

The following exhibits were offered by Petitioner and admitted into the record as exhibits:

1. Petitioner's Exhibit No. 1-9 (pages 1-75) is [a copy of] medical reports for Jayden.

The record was held open to allow the filing of Petitioner's Exhibits. No objections were filed. On March 28, 2019, the record was closed.

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 is the biological mother of [REDACTED] (date of birth [REDACTED], 2006) (hereafter the child) and [REDACTED] (date of birth [REDACTED], 2005).
2. [REDACTED] is the husband of Petitioner.
3. The biological father of the children passed away from an overdose on June 10, 2010.
4. On April 27, 2018, Children's Protective Services (CPS) was assigned an investigation alleging mental injury, physical abuse and threatened harm of [REDACTED].

5. The April 27, 2018, Children's Protective Services Investigation Report alleges that on April 26, [REDACTED] and [REDACTED] engaged in a physical altercation. [REDACTED] put [REDACTED] in a choke hold. [REDACTED] did not pass out. [REDACTED] dragged [REDACTED] up by his neck and down the stairs. [REDACTED]'s neck is red and swollen. [REDACTED] chased after [REDACTED]. [REDACTED] hid. [REDACTED] broke his pinky and hurt his neck when he went after [REDACTED]. Petitioner told [REDACTED] that she was going to send him to Juvie again. [REDACTED] has been to Appletree multiple times. There's a history of physical abuse allegations with this family.
6. On September 28, 2018, Petitioner's name was placed on Central Registry for Child Abuse – Mental Injury indicating that Petitioner is verbally hostile towards the children. She has made statements indicating that she hates them and has had thoughts of releasing her rights to the children. Police reports indicate she has made statements about having the boys removed from her care and only fighting for her daughter. She also made statements along the lines of wanting [REDACTED] and [REDACTED] to go to jail. These statements support the allegations of mental injury to the children. Petitioner lacks self-control when she is frustrated and makes harmful statements towards [REDACTED] and [REDACTED]. [REDACTED] is more tolerant of the statements, but [REDACTED] is more sensitive to the harmful statements. Law enforcement has been called to the residence to deal with behavior issues with [REDACTED] and [REDACTED] 38 times.
7. On February 6, 2019, the Ingham County Department of Health and Human Services received a request for hearing and removal of Petitioner's name from the Child Protective Services Central Registry.
8. On February 20, 2019, the Michigan Administrative Hearing System received a copy of the hearing summary and attached documents.

CONCLUSIONS OF LAW

The Child Protection Law provides for the reporting of child abuse/neglect and requires specific individuals to make reports of suspected abuse and neglect. The Department of Human Services maintains a Central Registry where it files reports and records of child abuse and neglect as directed by the Child Protection Law. See the Child Protection Law, 1975 Public Act (PA) 238, as amended, and MCL 722.621-722.638. Department policies are found in the Children's Protection Services Manual (PSM).

A person who is a subject of a report or record made pursuant to the Child Protection Law may request the agency to expunge it from the Central Registry if there is no relevant and accurate evidence of abuse or neglect found to exist in the report or record. MCL 722.627(5).

Amendment or expunction of record on Central Registry
must occur:

- . To correct inaccurate information
- . When the perpetrator requests amendment or expunction and the local office concurs
- . When ordered by an administrative hearing or rehearing, or circuit court order. PSM, Item 717-2, page 1.

If the agency refuses a request to amend or expunge, the person shall be granted a hearing conducted pursuant to the Administrative Procedures Act, 1969 PA 306, as amended, to determine, by a preponderance of the evidence, whether the report or record, in whole or in part, shall be amended or expunged from the Central Registry on the grounds that the report or record is not relevant or accurate evidence of abuse or neglect. MCL 722.627(6).

PSM 717-2, page 2 states in pertinent part:

The alleged perpetrator in a CPS case or an attorney representing that person may request the case record be amended or central registry be amended or expunged. This request must be in the form of a written request for hearing and submitted to the local office within 180 days from the date of service of the DHS-847, Notice of Placement on the Central Registry.

NOTE: A person's right to an administrative hearing under the CPL is not automatic or tied to the department's determination not to amend or expunge. Rather, a person must submit a written request for hearing within 180 days from the date of service found on the DHS-847. For good cause, an administrative hearing may be held if the written request for hearing is submitted within 60 days after the 180-day notice period expired. 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. PSM 717-2, page 2

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)

Child Abuse is defined as:

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 clergy. (Children's Protective Services Manual (PSM) 711-4, page 3)

Mental injury is defined as:

A pattern of physical or verbal acts or omissions on the part of the parent and/or person responsible for the health and welfare of the child that results in psychological or emotional injury/impairment to a child or places a child at significant risk of being psychologically or emotionally injured/impaired (e.g., depression, anxiety, lack of attachment, psychosis, fear of abandonment or safety, fear that life or safety is threatened, etc.).

Note: To make a finding of mental injury, a mental health practitioner must assess the child and either diagnose a psychological condition or determine that the child is at significant risk of being psychologically or emotionally injured/impaired. (PSM 711-5)

In this case, this Administrative Law Judge finds the following:

The child was under 18 years of age at the time Respondent received the complaint of child abuse and/or neglect. (PSM 711-5 page 2)

Policy dictates that Petitioner is a person responsible for the child as she is the child's parent. (PSM 711-5, page 1)

The child has a substantial mental health history.

A July 11, 2018, Psychological Evaluation indicates that the DSM V impression is child psychological abuse, other specified trauma and stress are related disorder, other specified disruptive, impulse control and conduct disorder.

The child is diagnosed with ADHD, bipolar disorder, oppositional defiant disorder, and schizophrenia related to seeing and hearing things others don't (hallucinations).

When asked the reasons for protective services involvement, the child stated, because of my brother, even though he starts it and does all that - my dad rips him off the steps and tackles him when he was trying to break windows. He broke the first pane of glass and a few days later he grabbed a bicycle rim and threatened to throw it through the window, my dad just backed up. He continued, and Bradley's things he is being abusive... He's just disciplining him - trying to keep the house good." He described a high degree of conflict between his brother and his parents which he described as quite stressful for him. When asked his opinion of improving the household he stated, "Just giving my brother a lot more freedom and me too - so I can get away from the drama. It gets my parents mad and whenever I asked to leave - they yell at me and send me to my room and that affects me because I want to be away when it's happening"

Based on the above findings of fact, Respondent has not established by a preponderance of the evidence that it was legally appropriate to list Petitioner's name on Michigan Central Registry for child abuse – mental injury. Though the Child was diagnosed as having a mental injury, the report does not indicate that the mental injury is caused specifically by Petitioner's treatment of the child.

The April 30, 2018, police report indicates that the child took a knife to school and allegedly tried to stab someone. He lied about where he got the knife and Petitioner called him a "fucking liar". The child later acknowledged that he lied.

A May 5, 2018, police report indicated that the child [REDACTED], and another boy set a box on fire in the shed which caused the shed to burn down. The remaining police reports in Respondent's Exhibit B involved [REDACTED]'s conduct and not [REDACTED]'s. The family has a long history of volatile incidents involving [REDACTED] and [REDACTED]. Petitioner's language may be profane (belittling or demeaning), but the child [REDACTED] has a long history of mental health issues and behavioral problems both in school and with law enforcement which the caseworkers did not witness. Neither child testified at the hearing. Petitioner's testimony that she is being punished for seeking help was undisputed. Petitioner admitted that she did tell her sons that she hated them because of their behavior. Petitioner alleged that she has been suffering with breast cancer and the children are incorrigible. The

caseworker who worked on the case was not present for the hearing and did not testify.

The Children's Protective Services Investigation Report indicates that Petitioner and her husband have had to physically restrain [REDACTED] and [REDACTED] in the past to prevent them from causing further harm to themselves or others. Multiple investigations have been brought to the attention of Children's Protective Services regarding physical abuse. The allegations of physical abuse were investigated frequently with no findings. Petitioner and her husband have sought help from community resources including community mental health, Havenwyck Hospital and community members who provide positive support.

On September 11, 2018, [REDACTED] was exhibiting defiant behaviors at school. His behaviors continue to escalate. Petitioner was called and he yelled and screamed at school officials and Petitioner. Law enforcement was contacted because [REDACTED] threatened to jump off the back of the truck when Petitioner was driving. Petitioner indicated that she did not think it would be safe for [REDACTED] to leave with her because he threatened to put zip ties around his neck. Jayden was transported to Sparrow Hospital for psychological evaluation as he was mentally unstable. (Respondent's Exhibit A)

This Administrative Law Judge finds that there is insufficient medical documentation on the record to establish that Petitioner is the cause of mental injury to the child [REDACTED]. Respondent has not established by the necessary, competent and material evidence on the record that it was acting in compliance with Department policy when it determined that Petitioner's name should be placed on the Central Registry for Child Abuse; nor, when it determined that Petitioner's name should remain on the Central Registry for Child Abuse based on mental injury.

Accordingly, after reviewing the hearing record in full and applicable law, it is the ruling of this ALJ that Petitioner's name was not properly placed on the Central Registry for Physical Abuse. Therefore, Respondent's refusal to remove Petitioner's name from the Central Registry must be reversed.

DECISION AND ORDER

This Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Petitioner's name shall be expunged from the Child Abuse and Neglect Central Registry for referral or complaint date of April 27, 2018.

ORDER

NOW THEREFORE, IT IS ORDERED that:

1. Respondent's denial decision as to Petitioner's placement on the Central Registry for complaint or referral date of April 27, 2018, is hereby **REVERSED**.
2. Respondent is hereby **ORDERED** to initiate expunction of Petitioner's name from the Central Registry for the complaint or referral date of April 27, 2018, within 10 days of the date of mailing of this Decision and Order.



Landis Lain
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 Administrative Hearing System (MAHS), 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 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 19th day of April 2019.

Heather Burmeister

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