



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

**IN THE MATTER OF:**

**MOAHR Docket No.: 19-013516-RECON**

██████████,  
**Petitioner**

**Agency Case No.:** ██████████

**v**

**Case Type: Expunction**

**MDHHS Expunction Unit,  
Respondent**

\_\_\_\_\_ /

**Issued and entered  
this 7<sup>th</sup> day of October 2020  
by: Lynn M. Ferris  
Administrative Law Judge**

**ORDER GRANTING RESPONDENT’S REQUEST FOR RECONSIDERATION  
AND  
DECISION AND ORDER OF RECONSIDERATION**

The request for rehearing or reconsideration filed by the Michigan Department of Health and Human Services Expunction Unit, (Department), on ██████████ 2020, of the ██████████ 2020, Decision and Order issued by Administrative Law Judge Lynn M. Ferris has been received and reviewed.

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration by Respondent Department of Health and Human Services (Department) of the Hearing Decision issued by the undersigned at the conclusion of the hearing conducted on , and mailed on August 6, 2020, in the above-captioned matter.

In its timely Request for Reconsideration dated August 14, 2020, the Department requests reconsideration of the Hearing Decision issued August 6, 2020 to due to the failure of the Hearing Decision to order dismissal of the two previously adjudicated Central Registry Listings regarding Petitioner ██████████ for ██████████ 2014 and ██████████ 2014. The two Complaint dates were previously adjudicated in a Decision and Order dated ██████████ 2017, MAHS Docket No. 16-015909 issued by the undersigned which upheld and affirmed the Department’s substantiation of Petitioner ██████████ for Improper Supervision and placement of her name on the Central Registry as regard both complaint dates. The Decision and Order resulted in affirming the Department’s placement of Petitioner’s name and identifying information on the Central Registry for Complaint ██████████ 2014 and ██████████ 2014. The Department

seeks an order of dismissal of these two prior adjudications due to Petitioner's administrative remedies having been exhausted. The Department essentially argues that Petitioner [REDACTED] is not entitled to a hearing on these matters as the Decision and Order issued [REDACTED] 2017 is a final decision and a hearing regarding both matters has already been held and a Decision and Order issued.

On August 14, 2020, the Department submitted a timely request for reconsideration and/or rehearing. The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application or services at issue and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. A rehearing is a full hearing which may be granted if the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision. BAM 600 (January 2020), p. 44. A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing and may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge misapplied manual policy or law in the hearing decision, which led to the wrong decision; issued a Hearing Decision with typographical errors, mathematical errors, or other obvious errors that affect the substantial rights of the petitioner; or failed to address other relevant issues raised in the hearing decision. BAM 600, p. 44-45.

In the request, the Department alleged that the undersigned failed to address relevant issues in the Hearing Decision. Because the Department alleges a failure to address relevant issues and has identified the failure of the Hearing Decision to order that the Petitioner's request for hearing regarding the two previously adjudicated Central Registry listings be dismissed, a basis for reconsideration is established. Therefore, the request for reconsideration is **GRANTED**.

## **DECISION AND ORDER OF RECONSIDERATION**

### **PROCEDURAL HISTORY**

This proceeding commenced with the issuance of a Notice of Hearing on [REDACTED] 2020 based on notification from the Michigan Department of Health and Human Services, Expunction Unit, Respondent that it would not expunge the name or identifying information of [REDACTED], Petitioner, from the Michigan Child Abuse and Neglect Central Registry for referral or complaint date of [REDACTED] 2014. 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 [REDACTED] 2020. Petitioner represented herself at the proceeding. Alicia Weatherby, Expunction Analyst appeared on behalf of Respondent. There were no additional witnesses at the proceeding.

Respondent called Alicia Weatherby, Expunction Analyst to present the department's case and to testify as witnesses. The following exhibits were offered by Respondent and admitted into the record as exhibits:

1. Respondent's Exhibit A is a copy of the DHS 3050 Hearing Summary dated December 19, 2019.
2. Respondent's Exhibit B is a copy of a MISACWIS screenshot of Central Registry Placement of the Petitioner.
3. Respondent's Exhibit C is a copy of the Petitioner's request for hearing for expunction of her name from Central Registry dated received [REDACTED] 2019.
4. Respondent's Exhibit D is a copy of the Decision and Order for default dated January 27, 2017, MAHS Docket No. 16-015909, Agency Case No. X3221235P issued by Administrative Law Judge Lynn M. Ferris regarding Children's Protective Services (CPS) Complaints dated [REDACTED] 2014 and [REDACTED] 2014. The Decision affirms the Departments placement of Petitioner on the Central Registry for both Complaint Dates.
5. Respondent's Exhibit E is a copy of the CPS Investigation Report for Complaint dated August 23, 2014.
6. Respondent's Exhibit F is a copy of the Family Risk Assessment of Abuse/Neglect dated September 4, 2014.
7. Respondent's Exhibit G is a copy of the CPS Notice of Action and Right dated November 6, 2014 for Complaint date of August 23, 2014 for Improper Supervision and Threatened Harm.
8. Respondent's Exhibit H is a copy of a [REDACTED] County Sheriff Case Report dated August 23, 2014.

Petitioner testified on her own behalf and called no as witnesses. No exhibits were offered by Petitioner and admitted into the record.

The record was closed at the conclusion of the hearing.

### **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.

A separate issue is presented regarding the Department's request for dismissal of Petitioner [REDACTED] hearing request regarding two prior adjudicated Complaints for Improper Supervision, for Complaints dated [REDACTED], 2014 and [REDACTED] 2014 as set forth in the Decision and Order in MAHS Docket No. 16-0015909 issued on [REDACTED] 2017.

Section 2 of the Child Protection Law, *supra*, includes the following relevant definitions:

- (g) "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(g).
- (k) "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(k).

Section 7 of the Child Protection Law, *supra*, provides in pertinent part:

- (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). \* \* \*.
- (6) A person who is the subject of a report or record made under this act may, within 180 days from the date of service of notice of the right to a hearing, request the department hold a hearing to review the request for amendment or expunction. If the hearing request is made within 180 days of the notice, the department shall hold a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part should be amended or expunged from the central registry. The hearing shall be held before a hearing officer appointed by the department and shall be conducted as prescribed by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department may, for good cause, hold a hearing under this subsection if the department determines that the person who is the subject of the report or record submitted the request for a hearing within 60 days after the 180-day notice period expired. \*\*\* 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 Child A (DOB [REDACTED] 2007) and Child B (DOB [REDACTED] 2011) and is the adoptive mother of child C (DOB [REDACTED] 2010).
2. On January 27, 2017, the undersigned, Administrative Law Judge Lynn M. Ferris issued a Decision and Order in MAHS Docket No. 16-015909 addressing the placement of Petitioner's name and identifying information on the Central Registry for Complaints dated [REDACTED] 2014 and [REDACTED] 2014. The Decision and Order Affirmed the Department's denial of Petitioner [REDACTED] [REDACTED] then hearing request requesting expunction and removal of her name from the Central Registry for Complaints dated [REDACTED] 2014 and [REDACTED] [REDACTED] 2014. Exhibit D. Pursuant to a Notice of Hearing issued on December

- 14, 2016 the hearing was conducted as scheduled on [REDACTED] 2017 at [REDACTED] am. The Petitioner did not appear for the hearing. After waiting 30 minutes for Petitioner to appear, the Department made a Motion for Default which was granted by the undersigned for the two Complaints dated [REDACTED] 2014 and [REDACTED] 2014. The Department's Motion for Default was granted pursuant to Section 78(2) of the Administrative Procedures Act. The Decision and Order was sent to the Petitioner as evidenced by the Proof of Service attached to the Decision and Order completed [REDACTED] 2017 certifying the mailing of the Decision and Order to Petitioner [REDACTED]. The Decision and Order also contained a notice to Petitioner of the appeal period and advised Petitioner she had 60 days after the date of mailing, [REDACTED] 2017, to file a Petition for Review requesting a reconsideration or rehearing. No returned mail of the Decision and Order is contained in the Michigan Administrative Hearings and Rules (MOAHR) record system, nor was any notice of appeal received from Petitioner. The 60 day appeal period has long since expired.
3. The Department's Hearing Summary dated December 19, 2019 in this matter, prepared by Alisha Weatherby, Expunction Analyst, sought dismissal of Petitioner's [REDACTED] request for hearing in this case dated [REDACTED] 2019 as regards two prior Children's Protective Services Central Registry Listings for Complaint dates for [REDACTED] 2014 and [REDACTED] 2014 involving Petitioner. Exhibit A. The [REDACTED] 2014 Complaint substantiated Petitioner [REDACTED] for Improper Supervision. The [REDACTED] 2014 Complaint substantiated the Petitioner [REDACTED] for Improper Supervision. The Department's request for dismissal of the hearing request as regards the [REDACTED] 2014 and the [REDACTED] 2014 Complaints was made due to the fact that these two Complaints had previously been adjudicated and affirmed by a Decision and Order issued [REDACTED] 2017 in MAHS Docket No. 16-015909 affirming the Department's placement of Petitioner's name on the Central Registry for both complaints.
  4. On August 23, 2014 the Respondent commenced an investigation regarding the Petitioner and allegations that Child A who resided with Petitioner was found approximately one half mile from the family home and walking on a busy street, Michigan Avenue, by himself with no adult supervision. The allegations were that Child A had no shoes or a shirt on and was only wearing a black diaper. A local resident saw Child A almost hit by a vehicle and a resident stopped to check on the Child A had him get in her car and notified law enforcement. Child A, age [REDACTED] did not know where he lived. Petitioner was sleeping at home when Child A left and called law enforcement to report him missing. Child A was retrieved by Petitioner from law enforcement. The confirmed maltreatments regarding Petitioner's conduct were Improper Supervision and Threatened Harm. Exhibit E
  5. The Department completed a Family Risk Assessment of Abuse/Neglect dated [REDACTED] 2014. The Neglect score was a risk score of 6 resulting in a moderate risk score. The Abuse score was a risk score of 4 a high risk

- score Category II. No mandatory or discretionary overrides were applied by the Department. Exhibit F.
6. The Department completed its Investigation and made the following Dispositional Findings: ... it is determined that there is a preponderance of evidence to confirm that [REDACTED] failed to properly supervise her son [Child A]. On three separate occasions, Child A was found wandering away from home without an adult present and unknown pedestrians or drivers contacted law enforcement. Each time, law enforcement brought Child A back home after providing him with MacDonald's. Child A is diagnosed with Autism and has a fascination with MacDonald's and often told law enforcement that he was walking to get McDonalds. [REDACTED] indicates that each time Child A has left the home is when she was sleeping and that she was unaware how he was getting out of the home as she purchased locks for the front and back door of the home. However, later it was confirmed that Child A has been escaping the home through the front window. According to the [REDACTED] County worker, Daniel Duncan, there continues to be concerns regarding [REDACTED] ability to properly supervise Child A as there have also been two incidents where Child A was found trying to cross busy streets and each time, he almost was hit. [REDACTED] was provided in-home services from Families First. The risk level in this case is High and will be opened as a Category II. [REDACTED] name will be placed on the Central Registry.
  7. On [REDACTED] 2014 the CPS opened a Category II and placed Petitioner's name on the Central Registry for Improper supervision when Child A was found unattended on Ford Road, a five lane road with a 45 miles per hour speed limit.
  8. On [REDACTED] 2014 the Respondent placed Petitioner's name and identifying information on the Central Registry for Improper Supervision and Threatened Harm.

### **CONCLUSIONS OF LAW**

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. MCL 722.627(7). The principles that govern judicial proceedings also apply to administrative hearings. As a trier of fact, the Administrative Law Judge must determine the weight, the effect and the value of the evidence, including the testimony of all witnesses.

When a hearing is requested, the presiding Administrative Law Judge conducts a *de novo* review in which 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. A preponderance of evidence is evidence which is of a greater weight or more convincing than evidence offered in

opposition to it. Protective Services Manual (PSM) 711-4 (February 2017), p. 9. 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). If this threshold burden is met, then Respondent must also prove that the petitioner has been properly placed on the Central Registry in conjunction with the provisions of the Child Protection Law, MCL 722.628d. Central Registry placement is evaluated in terms of the legal circumstances present at the time of the listing.

A Central Registry case is substantiated when there is a preponderance of evidence that Petitioner is the perpetrator of child abuse and/[or] neglect occurred and any one of the following:

- The case is classified as Category I or II.
- The perpetrator is a nonparent adult who resides outside the child's home.
- The perpetrator is a licensed foster parent.
- The perpetrator is an owner, operator, volunteer or employee of a licensed or registered childcare organization.
- A CPS case that was investigated before July 1, 1999, and the disposition of the complaint was "substantiated."

PSM 711-4 (February 2017) p. 2.

In this case, the Department listed Petitioner's name and identifying information on the Central Registry in connection with a complaint received by the Department dated [REDACTED] 2014. The Department alleges and concluded that Petitioner was the perpetrator of Child Neglect due to Improper Supervision and Threatened Harm of Child A.

Improper Supervision is defined as:

Placing the child in, or failing to remove the child from, a situation that a reasonable<sup>3</sup> person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in harm or threatened harm to the child.

<sup>3</sup>Reasonable: Black's Law Dictionary: being synonymous with rational; equitable; fair, suitable, moderate. PSM 711-5 (November 2013) p. 5.

Threatened Harm is defined as:

A child found in a situation where harm is **likely to occur** based on:  
A current circumstance (e.g., home alone, domestic violence, drug house).  
A historical circumstance (e.g., a history of abuse/neglect, a prior termination of parental rights or a conviction of crimes)



Some examples include, but are not limited to:

A child is home alone.

Driving under the influence of alcohol and/or illegal substances.

Drug house.

Domestic violence.

New child with prior termination of parental rights.

Known perpetrator of a crime against a child moving into the home (See PSM 712-6, CPS Intake-Special Cases and PSM 713-08, Special Investigative Situations, Complaints Involving A Known Perpetrator Moving In or Residing With A New Family sections.) PSM 711.5 (November 2013), pp. 6-7.

In this case the Department found a preponderance of evidence that Petitioner was the perpetrator of Improper Supervision and Threatened Harm when her then █ year old autistic son left the home in the morning and was found on a busy highway with cars traveling at 45 miles per hour. This was the █ time her son who is autistic and has an obsession with McDonalds had escaped the home. On two prior occasions, the Petitioner's son had done the same thing and was returned to the home by law enforcement.

The Department witness who investigated the August 23, 2014 was not available to testify and the Department Exhibits were admitted without objection by Petitioner. The Department presented Exhibits A through H and presented the evidence relying on the content of the exhibits and statements in the documents prepared by the Department in this case. █ did not dispute any of the evidence and conceded in her opening statement that she should have watched him more, she was tired from working but nonetheless stated I should have watched my child based upon the prior incidents and accepted full responsibility.

The case as presented by Ms. Weatherby explained that in the Department's view, the improper supervision was established by the facts in that Petitioner knew that her child had autism, and thus had some mental limitations and he had repeatedly left the home unattended without supervision and was placed in situations where he was found wandering on busy streets without supervision. In the incident arising from the █ 2014 Complaint, Child A was not clothed fully and was wearing only a black diaper, had no shoes, was almost hit by a car as stated in the police report and was picked up by another adult with children and driven to the police station. The child did not have any identification and did not know his address. In addition, he was found on Michigan Avenue, a multi lane busy highway. A similar incident to the one in this case involving Child A also had occurred on █ 2014, two months earlier where Child A was found on a 5 lane highway and was attempting to cross the busy street to go to McDonalds. That incident also resulted in the Petitioner being placed on the central registry and was determined to be a Category II. Clearly, the Petitioner knew of the danger posed by her son attempting to escape repeatedly and even this knowing the son escaped for a third time and was placed in danger having been almost hit by a car. The first investigation on █ 2014 approximately two weeks prior to the █

2014 Investigation involved both Petitioner's children who left the home escaping through a window.

Petitioner did not disagree with the Department's presentation and was upset about the incident as she should have been watching him. Petitioner also acknowledged that she agreed with the facts as presented by the Respondent and the Investigation Report and accepted full responsibility.

Given the severity of the harm to Child A which could have occurred had he been hit by a car and the repeated pattern of his behavior in all three incidents, based upon the definition of Improper Supervision, the facts presented clearly demonstrate that Child A was placed in a situation that his mother knew and at the least would realize requires judgment or actions beyond Child A's mental abilities and maturity. In addition, threatened harm was clearly demonstrated as by the facts presented in the police report as the witness who took Child A to the police said she saw him almost hit by a car. In addition, the incident also demonstrated threatened harm as harm would likely occur when an unsupervised child with Child A's abilities is attempting to engage with traffic and has no adult supervision in busy faster moving traffic, even if not almost hit by a car. Exhibit H.

Thus, the Department has met its burden to demonstrate a preponderance of evidence of both improper supervision and threatened harm of Child A by Petitioner.

A risk assessment determines the level of risk of future harm to the children in a family, categorizing the risk levels at intensive, high, moderate or low based on the scoring of the scale. PSM 713-11, p. 2. The risk assessment calculates risk based on the answers to the abuse and the neglect scales, regardless of whether the initial complaint was for abuse or neglect and is based on the higher score of either the abuse or neglect scale. PSM 713-11, p. 2. After the scoring of the scales, conditions must be assessed to determine whether a mandatory or discretionary override must be applied to increase the risk assessment level. PSM 713-11, p. 2. In moderate risk, Category III level cases where CPS refers the child's family to community-based services commensurate with the risk of harm to the child, CPS may escalate the case to a Category II if the family does not participate, or does not benefit from the services, and a risk and safety reassessment is completed warranting escalating the category. PSM 714-1 (November 2013), pp. 3-4. The case is escalated to a Category I any time a petition is filed. PSM 714-1, p. 4.

In this case, the risk assessment showed a score of 4 on the neglect scale, which equates with a "high" risk level. Petitioner did not dispute any of the scores on the risk assessment. Based on these circumstances, the case was properly classified as a Category II and Respondent properly placed Petitioner's name on the Central Registry.

Accordingly, after reviewing the hearing record in full and applicable law, it is the ruling of this ALJ that the Petitioner's name was properly placed on the Central Registry. Therefore, Respondent's refusal to remove Petitioner's name from the Central Registry for Complaint date [REDACTED] 2014 is upheld.

Additionally, the Department's request for dismissal of Petitioner's Hearing requests for the Department Children's Protective Services Complaints dated [REDACTED] 2014 and [REDACTED] 2014 is granted as the Complaints for [REDACTED] 2014 and [REDACTED] 2014 have been adjudicated by MAHS Decision and Order dated [REDACTED] 2017 and are final decisions affirming the Department's denial of removal of the Petitioner's name from Central Registry. In addition, no appeal of the Decision and Order dated [REDACTED], 2017 was made by Petitioner.

**DECISION AND ORDER**

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Petitioner's name shall not be expunged from the Child Abuse and Neglect Central Registry for referral or complaint date of [REDACTED] 2014.

Accordingly, Respondent's decision is **AFFIRMED**.


It is further **ORDERED** that the Petitioner's request for hearing for Complaints dated [REDACTED] 2014 and [REDACTED] 2014 are hereby **DISMISSED**.

  
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Lynn M. Ferris  
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 7<sup>th</sup> day of October 2020.

  
\_\_\_\_\_  
Tammy L. Feggan, Legal Secretary  
**Michigan Office of  
Administrative Hearings and Rules**

**Via Email:**

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