



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.: 19-014051-RECON

██████████
Petitioner

Agency Case No.: ██████████

v

Case Type: Expunction

**MDHHS Expunction Unit,
Respondent**

_____ /

**Issued and entered
this 25th day of January 2021
by: Alice C. Elkin
Administrative Law Judge**

ORDER DENYING REQUEST FOR REHEARING AND/OR RECONSIDERATION

On ██████████ 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request from Petitioner, ██████████ for rehearing and/or reconsideration of the ██████████ 2020 Decision and Order issued in the above-captioned matter by the undersigned administrative law judge (ALJ).

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. 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 ALJ 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 his name expunged from the Michigan Child Abuse and Neglect Central Registry (Central Registry) in connection with Child Protective Services (CPS) complaint dated [REDACTED] 2019. Petitioner participated in the telephone prehearing conference held August 5, 2020 but did not appear at the hearing scheduled on [REDACTED] 2020 within 15 minutes of the scheduled start time. The Order Following Prehearing Conference and Notice of Hearing scheduling the hearing notified Petitioner that the hearing could proceed in his absence if he failed to call in within 15 minutes of the 9:00 am start time. When Petitioner did not timely call in, Respondent asked to present its case and have a decision issued in his absence. In accordance with MCL 24.272 and Mich Admin Code, R 792.10134(1), Respondent presented its evidence and a Decision and Order was issued [REDACTED] 2020. The Decision and Order concluded that Respondent had presented sufficient evidence to support its placement of Petitioner's name and identifying information on the Central Registry and affirmed Respondent's placement of Petitioner's name on the Central Registry.

In his request, Petitioner argues that he did not receive notice of the hearing. When a party fails to appear to a hearing and the ALJ enters a default judgment pursuant to Mich Admin Code R 792.10134(1), the party against whom the default judgment was entered may, within seven days of the date the order was served, file a written motion to vacate the order. Mich Admin Code, R 792.10134(2). If the party demonstrates good cause for failing to attend the hearing, the matter may be rescheduled, reheard, or otherwise reconsidered as required to serve the interests of justice and the orderly and prompt conduct of proceedings. *Id.*

A review of the MOAHR records shows that, following the [REDACTED] 2020 prehearing conference, the Order Following Prehearing Conference and Notice of Hearing was sent to Petitioner on [REDACTED] 2020, with a certified proof of service, at the address he confirmed at the prehearing conference, which is the same address to which the notice of prehearing conference and the Decision and Order were sent. The Order Following Prehearing Conference and Notice of Hearing notified the parties that the hearing was scheduled on Wednesday, [REDACTED] 2020 at 9:00 am and that a hearing could proceed, and a decision issued, if a party did not appear within 15 minutes of the scheduled hearing time. The MOAHR records do not show that the Order Following Prehearing Conference and Notice of Hearing sent to Petitioner was returned to MOAHR as undeliverable. Petitioner acknowledged receiving the Decision and Order and the Notice of Prehearing Conference sent to him at the same address as the Order Following Prehearing Conference and Notice of Hearing. Under these facts, Petitioner has failed to counter that notice was properly served and, as such, to demonstrate good cause for failing to attend the [REDACTED] 2020 hearing. Accordingly, the undersigned finds no basis to vacate the [REDACTED] 2020 Decision and Order.

Furthermore, a full review of Petitioner's request fails to demonstrate any newly discovered, relevant evidence that could affect the outcome of the original hearing; a

misapplication of policy or law in the Hearing Decision that led to a wrong conclusion; or unaddressed relevant issues raised in the hearing request. See PSM 717-3, p. 8. Therefore, Petitioner has not established a basis for reconsideration.

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

IT IS SO ORDERED.



Alice C. Elkin
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

APPEAL 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 and/or attorneys, to their last-known addresses in the manner specified below, this 25th day of January 2021.



Tammy Feggan, Legal Secretary
**Michigan Office of
Administrative Hearings and Rules**

Via Email:

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