



STATE OF MICHIGAN

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

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

IN THE MATTER OF:

MOAHR Docket No.: 20-008418-RECON

██████████

Petitioner

Agency Case No.:

██████████

v

Case Type:

Expunction

**MDHHS Expunction Unit,
Respondent**

_____ /

**Issued and entered
this 8th day of April 2022
by: Zainab A. Baydoun
Administrative Law Judge**

**ORDER DENYING RESPONDENT'S
REQUEST FOR REHEARING/RECONSIDERATION**

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration filed on ██████████ 2022, by Department Analyst, Jane Ferrel, as representative on behalf of Respondent, of the Decision and Order issued by the undersigned at the conclusion of the hearing conducted on ██████████ 2021, and mailed on ██████████ 2021, in the above-captioned matter.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rules 792.10135 and 792.10136, *et seq.*, and applicable policy provisions articulated in the Protective Services Manual (PSM), specifically PSM 717-3, which provide that a rehearing or reconsideration must be filed in a timely manner in compliance with the statutory requirements or rules governing specific proceedings and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. MCL 24.287 also provides a statutory basis for a rehearing of an administrative hearing.

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), PSM 717-3 (June 2018), p.8. A reconsideration is a paper review of the facts, law and any new evidence or legal arguments. Reconsideration of an ALJ's 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, pp.

8-9. 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. PSM 717-3, pp. 8-9. 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. The Michigan Office of Administrative Hearings and Rules (MOAHR) determines if a rehearing or reconsideration will be granted. PSM 717-3, p. 8.

In the instant case, Petitioner requested an administrative hearing asking to have his name expunged from the Michigan Child Abuse and Neglect Central Registry (Central Registry) for a Children's Protective Services (CPS) complaint date of [REDACTED] 2019. The action concerned Petitioner's alleged violation of the Child Protection Law, 1975 PA 238, as amended, MCL 722.621 *et seq.* (Act).

In the [REDACTED] 2021, Decision and Order, the undersigned found that Respondent, failed to prove by a preponderance of the evidence that it was legally appropriate to list Petitioner's name on the Central Registry at the conclusion of the November 19, 2019, CPS investigation. The undersigned concluded that based on the evidence presented at the hearing, Petitioner's conduct, did not meet the definitions of child abuse or child neglect outlined in the Act and the evidence was insufficient to show that Petitioner was responsible for improper supervision, as defined in the PSM. See MCL 722.622 (g) and (k); PSM 711-5 (May 2016), pp. 5-7. The undersigned ordered that Petitioner's name shall be expunged from the Central Registry for the CPS complaint date of November 19, 2019.

Department Analyst, Jane Ferrel submitted Respondent's Request for Rehearing/Reconsideration on January 11, 2022, asserting that the December 29, 2021, Decision and Order is incorrect due to a misapplication of law and policy and a failure to address the relevant issues raised in the hearing request which resulted in an erroneous Decision and Order. Specifically, Respondent asserted that:

- a) There was misapplication of the Michigan Child Protection Law and PSM 711-5 in respect to whether the children were placed at risk for injury, met the burden of proof regarding a preponderance of evidence and placement on Central Registry.

In Respondent's request for rehearing and/or reconsideration, Respondent presents arguments similar to those offered during the administrative hearing with respect to the interviews conducted during the CPS investigation, the assessments made during the investigation, and Petitioner's placement on the Central Registry. Respondent asserts that Respondent met its burden of proof and that a preponderance of evidence was presented to show that it was legally appropriate to identify Petitioner's name on the Central Registry in connection with the November 19, 2019, CPS investigation.

However, the arguments identified in Respondent's request for rehearing and/or reconsideration were already considered by the undersigned ALJ prior to the issuance of the Decision and Order. No additional documentation was presented with Respondent's request for rehearing and/or reconsideration.

Respondent does not allege that 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), PSM 717-3 (June 2018), p. 8. Therefore, Respondent has failed to establish a basis for a rehearing. Additionally, although Respondent argues otherwise, after full review, Respondent's request fails to demonstrate that the undersigned misapplied policy or law in the hearing decision resulting in a wrong conclusion; or that the administrative law judge failed to address, in the hearing decision, relevant issues raised in the hearing request. PSM 717-3, pp. 8-9.


Respondent did not specify which relevant issue was raised in the hearing request that the undersigned ALJ failed to address in the Decision and Order. Respondent appears to be disputing the credibility assessment made by the undersigned ALJ in the Decision and Order with respect to the testimony of the witnesses and the documentary evidence presented during the hearing. It is noted however that, "It is the administrative fact-finder's responsibility to determine whether evidence and testimony are persuasive and credible." *Van Zandt v State Employees' Retirement Sys*, 266 Mich App 579, 593; 701 NW2 214 (2005).

Furthermore, Respondent's request for rehearing and/or reconsideration presents various speculative arguments regarding Petitioner's involvement in alleged criminal actions and the potential ramifications of such criminal activity. However, no evidence of criminal activity was presented during the administrative hearing nor was any evidence presented that Petitioner was charged with or convicted of any crime related to the allegations in the [REDACTED] 2019, CPS investigation.

Therefore, Respondent has not established an adequate basis for reconsideration. Instead of articulating a basis for rehearing and/or reconsideration, Respondent is generally challenging the decision in an attempt to relitigate the hearing, as all arguments raised by Respondent in its request were considered by the undersigned during the administrative hearing and referenced in the Decision and Order. Mere disagreement with the Decision and Order does not warrant a rehearing and/or reconsideration of this matter.

Accordingly, the request for rehearing and/or reconsideration is **DENIED** this matter is hereby **DISMISSED**.

IT IS SO ORDERED.




Zainab A. Baydoun
Administrative Law Judge

NOTICE: Within 60 days after the date of mailing of this Order, 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 8th day of April 2022.



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

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