



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.: 22-004785

██████████
Petitioner

Agency Case No.: ██████████

v

Case Type: Expunction

**MDHHS Expunction Unit,
Respondent**

_____ /

**Issued and entered
this 14th day of April 2023
by: Carmen G. Fahie
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This proceeding commenced with the issuance of a Notice of Hearing on January 5, 2023, 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 ██████████ ██████████ Petitioner, from the Michigan Child Abuse and Neglect Central Registry for referral or complaint date of September 12, 2021. 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 February 8, 2023. Petitioner represented himself at the proceeding. Jason Alexander, Department Analyst from the Expunction Unit, appeared on behalf of Respondent.

Respondent called Officer Zachary Running, from the Michigan State Police, Rasheedah Pegues, Children's Protective Services (CPS) Supervisor, and Maya Hairston-Moore, CPS Worker, at the time of the CPS investigation, to testify as witnesses. The following exhibits were offered by Respondent and admitted into the record as exhibits except Department F, which was a part of the hearing packet, but not admitted:

- A. Hearing Summary
- B. Request for Expungement
- C. Children's Protective Services Investigation Report
- D. Law Enforcement Report
- E. SANE Reports
- F. Risk Assessment, not admitted
- G. Notice of Placement on Central Registry
- H. MiSACWIS Central Registry
- I. Child Protection Law, PSM711-4, PSM 711-5, PSM 713.01

Petitioner testified on his own behalf. 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.

Section 2 of the CPL, MCL 722.622, includes the following relevant definitions:

- (d) "Central registry case" means the department confirmed that a person responsible for the child's health or welfare committed serious abuse or neglect, sexual abuse, or sexual exploitation of a child, or allowed a child to be exposed to or have contact with methamphetamine production.

* * *

- (n) "Confirmed case" means the department has determined, by a preponderance of evidence, that child abuse or neglect occurred by a person responsible for the child's health, welfare, or care.
- (o) "Confirmed case of methamphetamine production" means a confirmed case that involved a child's exposure or contact with methamphetamine production. MCL 722.622(o).
- (p) "Confirmed serious abuse or neglect" means a confirmed case of mental injury or physical injury or neglect to a child that involves any of the following:
 - i. Battering, torture, or other serious physical harm.
 - ii. Loss or serious impairment of an organ or limb.
 - iii. Life-threatening injury.

- iv. Murder or attempted murder.
- v. Serious mental harm.

- (q) “Confirmed sexual abuse” means a confirmed case that involves sexual penetration, sexual contact, attempted sexual penetration, or assault with intent to penetrate as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a.
- (r) “Confirmed sexual exploitation” means a confirmed case that involves allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as that term is defined in section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c.

Section 7j of the CPL, MCL 722.627j, provides in pertinent part:

- (1) The department must maintain a statewide, electronic case management system to carry out the intent of this act. . . .
- (2) The department must classify a confirmed case of methamphetamine production, confirmed serious abuse or neglect, confirmed sexual abuse, or confirmed sexual exploitation, as a central registry case.

* * *

(6) Within 30 days after the classification of a central registry case, the department must notify in writing each person who is named in the record as a perpetrator of the confirmed serious abuse or neglect, confirmed sexual abuse, confirmed sexual exploitation, or confirmed case of methamphetamine production. The notice requirements include all of the following:

- (a) The notice must be sent by registered or certified mail, return receipt requested, and delivery restricted to the addressee.
- (b) The notice must set forth the person's right to request expunction of the record and the right to a hearing if the department refuses the request.
- (c) The notice must state that the record may be released under section 7d.
- (d) The notice must not identify the person reporting the suspected child abuse or child neglect.

(9) The department must hold a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part meets the statutory requirement of confirmed serious abuse or neglect, confirmed sexual abuse,

confirmed sexual exploitation, or confirmed case of methamphetamine production and should be amended or expunged from the central registry. The hearing must be held before an administrative law judge and must 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. This subsection does not apply to an individual for which the court has entered an order of conviction described in subsection (3).

PSM 711-4

Confirmed Sexual Abuse

A confirmed case that involves sexual penetration, sexual contact, attempted sexual penetration, or assault with intent to penetrate as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a.

PSM 713-13

OVERVIEW

The Child Abuse and Neglect Registry (CA/NCR) contains a list of individuals who were identified as a perpetrator in a central registry case. Confirmed cases of child abuse and/or neglect resulting in central registry placement require notification to the identified perpetrator. Confirmed cases of child abuse and/or neglect that do not result in central registry placement also require notification to the identified perpetrator.

Definitions

Confirmed Case

The department has determined, by a preponderance of evidence, that child abuse or child neglect occurred by a person responsible for the child's health, welfare, or care. If the case is not confirmed for methamphetamine production, serious abuse or serious neglect, sexual abuse, or sexual exploitation, it does not require central registry placement.

Central Registry Case

The department confirmed that a person responsible for the child's health or welfare committed serious abuse or neglect, sexual abuse, sexual exploitation of a child, or allowed a child to be exposed to or have contact with methamphetamine production.

The central registry contains a repository of names of individuals who are identified as perpetrators in a central registry case in the department's statewide electronic case management system. The registry includes:

- Individuals who have been given appropriate notification, identified by a date in the due process (DP) box, their names were placed on central registry.
- Individuals placed on central registry but who the department cannot verify the individual received appropriate notification.
- Individuals referred to the department by a convicting criminal court following an order of conviction for a violation of section 136b of the Michigan Penal Code, involving a minor victim, and any conviction involving the death of a child.

Note: Individuals that need to be placed on or removed from central registry as a result of a criminal conviction will be addressed by Children's Protective Services (CPS) program office.

AMENDMENT AND EXPUNCTION

An individual who is the subject of a report or record made may request the department amend or expunge an inaccurate report or record from the central registry and/or local office file. See [PSM 717-2, Amendment or Expunction](#), and [PSM 717-3, Administrative Hearing Procedures](#), for more information on amendments and expunctions. See [SRM 131, Confidentiality](#), for more information on what information can be released from the CPS file.

If the investigation of a report conducted under MCL 722.627j does not show serious abuse or neglect, sexual abuse, sexual exploitation, or methamphetamine production

by a preponderance of the evidence, or if a court dismisses a petition based on the merits of the petition filed under section 2(b) of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, because the petitioner has failed to establish, or a court has failed to find, that the child comes within the jurisdiction of the court following an adjudication hearing, the information identifying the subject of the report must be expunged from the central registry after a party has exhausted all appellate remedies and an appellate review does not find that the child is within the jurisdiction of the court.

Note: This section does not apply to individuals for which the court has entered an order of conviction.

Note: A court must find and dismiss a petition on jurisdiction for the department to remove the petitioner from the Central Registry. Other reasons for the dismissal of a case that does not involve the court dismissing on the merits do not result in removal from the Central Registry.

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 former living together partner (LTP) of the biological mother of Child A, daughter, ■ years old; Child B, daughter, ■ years old; and Child C, son, ■ years old at the time of the CPS investigation, which makes him a person responsible at times relevant to this matter. Department Exhibit C.
2. On September 12, 2021, Respondent received a complaint against Petitioner for failure to protect, improper supervision, and sexual abuse due to the allegation that the Petitioner was raping Child B where the Petitioner allegedly put his penis in her vagina and butt, and it hurt badly. The Petitioner allegedly sexually abused Child B all the time for punishment. The sexual abuse allegedly occurred when the biological mother was asleep. The Petitioner would come into Child B's room in the middle of the night where Child B would wear an eye mask to bed when the Petitioner would rape her, and she would pretend to be asleep. Child B told her mother about the sexual abuse performed by the Petitioner, but she told Child B that it was just a dream. Department Exhibit C.
3. CPS commenced an investigation based on the referral received on September 12, 2021. Department Exhibit C, D, and E.

4. On [REDACTED] 2021, the Michigan Department of State Police documented being dispatched to [REDACTED] for a report of Criminal Sexual Conduct (CSC). The biological mother stated that her children, Child A and Child B, were sexually assaulted by the Petitioner at their residence in [REDACTED] MI. She stated that her oldest daughter, Child A, may have been sexually assaulted by the Petitioner, but Child A would not disclose this information herself in a public setting. The biological mother stated that Child B and Child C disclosed to Child A who disclosed to her cousin, [REDACTED], that Child B and Child C were sexually assaulted by the Petitioner and that it involved penetration. Child B informed her mother that the Petitioner "hurt" her. Interviews were arranged at the [REDACTED] in [REDACTED]. The complaint remained open pending further interviews. Department Exhibit D.
5. On [REDACTED] 2021, Child A was present to be physically examined at [REDACTED]. Child A did not consent to a physical examination. She did disclose that when her stepdad drank or smoked weed some bad things would happen usually when her mother was sleeping. Child A woke up in the middle of the night and her shorts were on the bed. She sleeps in her shorts, so she pulled her shorts back on and went back to sleep. Child A doesn't know what happened because her shorts do not fall off of her while she is asleep. She told her mother the next day and her mother thought it was a dream or something. Her mother talked to the Petitioner about the incident, and he said that he didn't know anything. When their mother was cooking, he got into the shower with Child A and Child B. After they got out of the shower and their mother was done cooking, they ate. Her mother talked to him and told him not to do it again. The Petitioner also came into the shower when Child A and Child B were taking separate showers while her mother was cooking food. It usually happened when her mother was cooking food. Child A reported that the Petitioner strangled her while playing where she had to say stop very loudly to get him to stop. Department Exhibit E.
6. On [REDACTED] 2021, Child B was present to be physically examined at [REDACTED]. She underwent a physical examination. Child B reported that she was there because of the sexual assault. She admitted to having nightmares. Child B reported that sometimes she hurts everywhere on her body. She said that she was trying to get this guy into prison. She reported that someone touched her, hurt her, or made her uncomfortable. Her mother broke up with the Petitioner when she found out that he had been touching her and her sister where he is not supposed to. Child B disclosed that this happened more than once. Child B stated that she had no adults that she could trust. Department Exhibit E.
7. On [REDACTED] 2021, the Michigan Department of State Police documented their interview with the family cousin, [REDACTED], and the interview was recorded on the in-car camera of the vehicle. The cousin disclosed that Child

B told her that she was being “hurt” by the Petitioner downstairs. Child B stated that her vagina and butt were being hurt by the Petitioner’s penis. Child B admitted telling her mother the information, but her mother allegedly told her that she was just dreaming. Child B reported that the Petitioner would use sexual abuse as a punitive measure and tell Child B that it was “her fault” as he was assaulting her. █████ stated that Child A disclosed to her on two separate incidents. On the first occasion, Child A stated that she prefers to be shaved “down there” because her mother and the Petitioner are both shaved as well. Her mother was shaving Child A when the Petitioner entered the room and took the mother’s place and began shaving Child A on her private parts. Child A disclosed that one night she woke up and her shorts were pulled down. Child B disclosed on two separate occasions where Child A and Child B were showering in their mother’s bathroom while their mother was sleeping, and the Petitioner entered the shower without any clothes on while they were still in the shower. Child B also disclosed that the Petitioner would enter her room whenever she was getting dressed and wouldn’t leave until she was finished changing. Child C disclosed that the Petitioner hurt his butt. Department Exhibit D.

8. On October 1, 2021, the Attending Pediatric Intensivist from the █████ Physician submitted a letter to the CPS Caseworker about the SANE records of Child A, Child B, and Child C and provided a summation of the report. Child A was █ years old at the time and refused a physical exam, but she did give history that the Petitioner would get intoxicated and then bad things would happen in █████ Michigan. On one occasion she found that her shorts that she usually sleeps in were off her body and on the bed. On another occasion when she and a sibling were in the shower the Petitioner apparently joined them. Another incident happened in a bathtub, which was similar. Child A did not make any specific allegation and did not indicate a date of the last possible contact.

Child B was █ years old at the time of the examination. She has had a previous SANE evaluation in 2019. Child B does have a history of recurrent vulvar redness. She indicated that she had had nightmares related to what had happened to her and the Petitioner had touched her inappropriately. Child B gave no specifics. Last contact with the Petitioner was not known. The SANE report indicates the presence of perianal and vestibular erythema on the examination. Child B had a normal examination except for mild chafing and redness of the labia majora, which was likely from chronic dampness. There was no evidence of old or acute injury to the vaginal area and no evidence of sexually acquired infection. There was no obvious injury to the hymen. There was no obvious anal injury.

Child C was █ years old at the time of examination. He denied any form of abuse. He also refused a physical examination. Mom indicated that Child C has fecal soiling, which is seen in approximately 24% of cases of highly

- suspected sodomy. However, it is seen 18% of the time when there is no high degree of suspicion that a child has been sodomized. The difference is statistically significant, but not clinically so. Department Exhibit E.
9. On [REDACTED] 2021, Child B was interviewed by a forensic interviewer employed by [REDACTED]. Child B disclosed that she told [REDACTED] about the abuse, but she trusted the wrong person. Child B believed that [REDACTED] was making plans to take her and her siblings away from their mother. She admitted getting hurt and touched in the wrong places by a man that happened with her Dad and his friend. Her Dad friend hurt them even though he knew what happened to them. Child B stated that friends of “abusers” become “abusers”. The Petitioner hurt her in her room on her bed. Department Exhibit D.
 10. On [REDACTED] 2021, Child A was interviewed by a forensic interviewer employed by [REDACTED]. Child A said that they were being interviewed because of what happened to her little sister, Child B. Child A didn’t understand why [REDACTED] wanted her to go to the hospital for an exam. Child B talked to [REDACTED] because she had no one to protect her. Child A never talked to [REDACTED] because she wouldn’t allow herself to be alone with her. Department Exhibit D.
 11. On [REDACTED] 2021, the Petitioner was interviewed by the Michigan State Police. He admitted to rocking Child B to sleep when she would wake up from nightmares. The Petitioner would hold her and tuck her in to ensure that she does not have nightmares. The Petitioner stated that the kids always asked him to do their hair while they were in the shower. The biological mother witnessed this and could attest for this. He is a barber, and he would cut and wash the kids’ hair for them. The Petitioner stated that he would not touch the kids’ private parts. He would wash their hair then leave the bathroom. The Petitioner did this with Child A and Child B and they were completely nude when he was doing so. He has been doing that since Child A and Child B grew comfortable around him, which he estimated to be a year after meeting them. The Petitioner stated that Child A asked him for a razor, but he never shaved Child A himself. The Petitioner declined to take a polygraph test because he didn’t do anything. He was informed that Child B mentioned his name specifically when she stated that she was hurt by her Dad and her Dad’s friend. He stated that he would never hurt Child B. He knew that her father molested her in her bedroom, but he has never done anything of the sort. Department Exhibit D.
 12. On [REDACTED] 2021, Respondent placed Petitioner’s name on the Central Registry as a perpetrator of Child Abuse of sexual abuse and Child Neglect of improper supervision as a Category II where a preponderance of the evidence showed that the Petitioner was in the shower naked with Child A and Child B due to the Petitioner stating that the kids always ask him to do

their hair while they were in the shower where he admitted that he had done this where the children were completely nude and that the biological mother knew that this was occurring. Child B stated credibly that she was hurt by the Petitioner in her bed by him putting his penis in her vagina and butt multiple times. Child B told her mother, but her mother told her that she was dreaming. The Petitioner allegedly took over from the biological mother and shaved Child A private parts. The family no longer resides with the Petitioner. He currently maintains his own residence. It is unknown if penetration occurred. The biological mother was unaware of these concerns until recently. The biological mother was made aware through the safety plan that the Petitioner was not allowed to be around her children and the consequences of criminal charges and the possibility of court involvement if the safety plan was not followed. The family was referred to Family First. Department Exhibit C and H.

13. On January 4, 2022, Respondent sent Petitioner a Notice of Actions and Rights showing that he was identified on Central Registry as a person responsible for Child Abuse of sexual abuse and Child Neglect of improper supervision. Department Exhibit G.

14. On April 12, 2022, Respondent received a request for an administrative hearing for Petitioner's name to be removed from Central Registry. Department Exhibit B.

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. This proceeding is governed by the Administrative Procedures Act, MCL 24.201 *et seq.* Mich Admin Code, R 792.11027. 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 the petitioner is a person responsible for the child's health or welfare and that the petitioner committed serious abuse or neglect of the child, sexual abuse of the child, sexual exploitation of the child or allowed the child to be exposed to or have contact with methamphetamine production as defined by the CPL. MCL 722.627j(9).

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 (November 2022), p. 10. 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). 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. In doing so, the administrative law judge follows "the rules of evidence as applied in a nonjury civil case in circuit court . . . as far as practicable, but . . . may admit and give

probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." MCL 24.275.

In this case, Respondent listed Petitioner's name and identifying information on the Central Registry in connection with a CPS complaint dated September 12, 2021. Respondent concluded, based on its investigation of the September 12, 2021, complaint, that Petitioner was the perpetrator of child abuse of sexual abuse and child neglect of improper supervision.

During the hearing, the Petitioner testified that he had not done anything to the children. He had helped the mother take care of the children. The Petitioner stated that it was the children's father who had sexually molested them, and he was doing time in jail for sexual abuse. He felt that he was being singled out through misplacement of the sexual abuse perpetrated by the children's father.

The Department is requesting that the Petitioner remain on the Central Registry for a lifetime due to the allegation of penetration of confirmed sexual abuse, which requires the physical abuse to also remain. Respondent must classify a confirmed sexual abuse case as a Central Registry case. MCL 722.627j(2). A confirmed case means that there is "a preponderance of evidence that child abuse or child neglect occurred by a person responsible for the child's health, welfare, or care." "Confirmed sexual abuse" means a confirmed case that involves sexual penetration, sexual contact, attempted sexual penetration, or assault with intent to penetrate as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a. MCL 722.622(q). Policy defines sexual abuse to include:

- sexual contact which includes but is not limited to the intentional touching of the victim's or alleged perpetrator's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or alleged perpetrator's intimate parts, if that touching can be reasonably construed as being for the purposes of sexual arousal, gratification, or any other improper purpose.
- sexual penetration or assault with intent to penetrate which includes sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body. (Emission of semen is not required).
- Accosting, soliciting or enticing a minor child to commit, or attempt to commit, an act of sexual contact or penetration, including prostitution.
- Knowingly exposing a minor child to any of the above acts.

PSM 711-5, p. 5.

Intimate parts include the primary genital area, groin, inner thigh, buttock, or breast of a human being. MCL 750.520a(f).

Here, Respondent put Petitioner's name on the Central Registry due to its finding of a confirmed case of sexual abuse of Child A and Child B by Petitioner. As Child A and

Child B were not present at the hearing, the undersigned ALJ must rely on other evidence to determine the weight of Child A's and Child B's statements. On [REDACTED] 2021, Child A was present to be physically examined at [REDACTED]. Child A did not consent to a physical examination. She did disclose that when her stepdad drank or smoked weed some bad things would happen usually when her mother was sleeping. Child A woke up in the middle of the night and her shorts were on the bed. She sleeps in her shorts, so she pulled her shorts back on and went back to sleep. Child A doesn't know what happened because her shorts do not fall off of her while she is asleep. She told her mother the next day and her mother thought it was a dream or something. Her mother talked to the Petitioner about the incident, and he said that he didn't know anything. When their mother was cooking, he got into the shower with Child A and Child B. After they got out of the shower and their mother was done cooking, they ate. Her mother talked to him and told him not to do it again. The Petitioner also came into the shower when Child A and Child B were taking separate showers while her mother was cooking food. It usually happened when her mother was cooking food. Child A reported that the Petitioner strangled her while playing where she had to say stop very loudly to get him to stop.

On [REDACTED] 2021, Child B was present to be physically examined at [REDACTED]. She underwent a physical examination. Child B reported that she was there because of the sexual assault. She admitted to having nightmares. Child B reported that sometimes she hurts everywhere on her body. She said that she was trying to get this guy into prison. She reported that someone touched her or hurt or made her uncomfortable. Her mother broke up with the Petitioner when she found out that he had been touching her and her sister where he is not supposed to. Child B disclosed that this happened more than once. Child B stated that she had no adults that she could trust.

In order to establish a finding of sexual abuse, there must be intentional touching of the victim's intimate parts, and that touching can be reasonably construed as being for the purposes of sexual arousal, gratification, or any other improper purpose. PSM 711-5, p. 5. There was evidence on the record that the Petitioner was interviewed by the Michigan State Police on [REDACTED] 2021. He admitted to rocking Child B to sleep when she would wake up from nightmares. The Petitioner would hold her and tuck her in to ensure that she does not have nightmares. The Petitioner stated that the kids always asked him to do their hair while they were in the shower. The biological mother witnessed this and could attest for this. He is a barber, and he would cut and wash the kids' hair for them. The Petitioner stated that he would not touch the kids' private parts. He would wash their hair then leave the bathroom. The Petitioner did this with Child A and Child B and they were completely nude when he was doing so. He has been doing that since Child A and Child B grew comfortable around him, which he estimated to be a year after meeting them. The Petitioner stated that Child A asked him for a razor, but he never shaved Child A himself. The Petitioner declined to take a polygraph test because he didn't do anything. He was informed that Child B mentioned his name specifically when she stated that she was hurt by her Dad and her Dad's friend. He

stated that he would never hurt Child B. He knew that her father molested her in her bedroom, but he has never done anything of the sort.

Further evidence on the record was garnered from the SANE interview of Child A and Child B. On [REDACTED] 2021, the Attending Pediatric Intensivist from the [REDACTED] Physician submitted a letter to the CPS Caseworker about the SANE records of Child A, Child B, and Child C and provided a summation of the report. Child A was [REDACTED] years at the time and refused a physical exam, but she did give history that the Petitioner would get intoxicated and then bad things would happen in Cheboygan, Michigan. On one occasion she found that her shorts that she usually sleeps in were off her body and on the bed. On another occasion when she and a sibling were in the shower the Petitioner apparently joined them. Another incident happened in a bathtub, which was similar. Child A did not make any specific allegation and did not indicate a date of the last possible contact.

Child B was [REDACTED] years old at the time of the examination. She has had a previous SANE evaluation in 2019. Child B does have a history of recurrent vulvar redness. She indicated that she had had nightmares related to what had happened to her and the Petitioner had touched her inappropriately. Child B gave no specifics. Last contact with the Petitioner was not known. The SANE report indicates the presence of perianal and vestibular erythema on the examination. Child B had a normal examination except for mild chafing and redness of the labia majora, which was likely from chronic dampness. There was no evidence of old or acute injury to the vaginal area and no evidence of sexually acquired infection. There was no obvious injury to the hymen. There was no obvious anal injury.

Respondent properly placed Petitioner's name on the Central Registry as a perpetrator of Child Abuse of sexual abuse and Child Neglect of improper supervision as a Category II on [REDACTED] 2021. The preponderance of the evidence showed that the Petitioner was in the shower naked with Child A and Child B due to the Petitioner stating that the kids always ask him to do their hair while they were in the shower where he admitted that he had done this where the children were completely nude and that the biological mother knew that this was occurring. Child B stated credibly that she was hurt by the Petitioner in her bed by him putting his penis in her vagina and butt multiple times. Child B told her mother, but her mother told her that she was dreaming. The Petitioner took over from the biological mother and shaved Child A private parts. The family no longer resides with the Petitioner. He currently maintains his own residence. It is unknown if penetration occurred. The biological mother was unaware of these concerns until recently. The biological mother was made aware through the safety plan that the Petitioner was not allowed to be around her children and the consequences of criminal charges and the possibility of court involvement if the safety plan was not followed.

As a result, this Administrative Law Judge finds that the Department has met their burden by the preponderance of the evidence on the record. Therefore, Petitioner's conduct, which resulted in the [REDACTED] 2021, CPS complaint and following

investigation, does meet the definition of sexual abuse as set forth in the CPL, MCL 722.622(q), and Department policy, PSM 711-5. Based on the above findings of fact, it is concluded that Respondent has established by a preponderance of the evidence that, under the CPL, Petitioner's name on the Central Registry for the complaint date of September 12, 2021, should not be amended or expunged. Under the CPL, perpetrators of confirmed cases of sexual abuse must remain on the Central Registry for their lifetime. MCL 722.627j(10). Respondent's continued placement of Petitioner's name on the Central Registry under the recently amended CPL effective January 5, 2022, was appropriate. Accordingly, after reviewing the hearing record in full and applicable law and policy, Petitioner's name was properly placed on the Central Registry. Therefore, Petitioner's name and identifying information must not be removed from the Central Registry.

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 September 12, 2021.

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




Carmen G. Fahie
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 14th day of April 2023.



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

Via-Electronic Mail :

Respondent

MDHHS Expunction Unit
DHHS-Expungement-Unit@michigan.gov

Interested Party

MDHHS-Children's Legal Services Division
CSARequestforLegalResearch@michigan.gov

Via-First Class Mail :

Petitioner

██████████
██████████
██████ MI ██████