



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.: 22-006306

██████████
Petitioner

Agency Case No.: ██████████

v

Case Type: Expunction

**MDHHS Expunction Unit,
Respondent**

_____ /

**Issued and entered
this 23rd day of March, 2023
by: Alice C. Elkin
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This matter was initiated on July 5, 2022 with the receipt by Respondent Michigan Department of Health and Human Services (Respondent or Department) of a hearing request from Petitioner ██████████ disputing the decision by Respondent to place Petitioner’s name on the Michigan Child Abuse and Neglect Central Registry (Central Registry) following an investigation of a Child Protective Services (CPS) complaint dated ██████████ 2021. That investigation concluded that the Child Protection Law (CPL), MCL 722.621 *et seq.*, required placement of Petitioner’s name and identifying information on the Central Registry.

On or around January 13, 2023, Respondent filed a hearing summary and proposed exhibits with the Michigan Office of Administrative Hearings and Rules (MOAHR) in response to, and together with, Petitioner’s hearing request. On February 2, 2023, MOAHR issued a Notice of Hearing, scheduling the hearing on March 13, 2023 at 1:30 pm, via videoconference. The Notice was sent via email to Respondent and via postal service to Petitioner.

On the hearing date and at the scheduled time, a hearing conducted in accordance with the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, commenced. Petitioner appeared at the hearing along with his attorney, Matthew Reyes. No representative on

behalf of Respondent appeared at the hearing. A review of the file in this matter showed that MOAHR had not received any adjournment request from Respondent or any other correspondence concerning this matter after the Notice of Hearing was issued and before the hearing date and time.

Section 72(1) of the APA, MCL 24.272(1), and Rule 134 of the Administrative Hearing Rules, Mich Admin Code, R 792.10134, provide that, if a party fails to appear in a contested hearing where notice has been properly served and no adjournment has been granted, the hearing may proceed and a decision may be made in the party's absence. Section 78(2) of the APA, MCL 24.278(2), provides for disposition of a contested case via default. After 15 minutes passed from the scheduled start time of the hearing, the hearing proceeded in Respondent's absence upon Petitioner's counsel request for a default proceeding. Petitioner's attorney had Petitioner testify at the hearing and presented no documents for admission into the record.

ISSUES AND APPLICABLE LAW

The issue at the hearing was whether the record of child abuse or child neglect against Petitioner should be amended or expunged from the Central Registry for the CPS complaint or referral date of October 22, 2021. The CPL governs this matter.

FINDINGS OF FACT

1. On October 22, 2021, CPS received a complaint alleging that Petitioner was the perpetrator of child abuse or neglect concerning his then 14-year-old daughter (Child A).
2. Because Child A resided with her mother in ██████ County, Respondent filed a child protective proceeding petition in ██████ County Probate Court. Respondent also filed a child protective proceeding petition in ██████ County where Petitioner's then █-year-old daughter resided with her mother.
3. Respondent placed Petitioner's name on the Central Registry in connection with the October 22, 2021 CPS investigation.
4. On ██████ 2022, Petitioner filed a request with Respondent for amendment or expunction of his name from the Central Registry, and Respondent denied the request.
5. On January 13, 2023, Respondent forwarded Petitioner's hearing request, along with a hearing summary and proposed exhibits, to the Michigan Office of Administrative Hearings and Rules.

6. On February 2, 2023, the Michigan Office of Administrative Hearings and Rules issued a Notice of Hearing, scheduling a contested case hearing on March 13, 2023.
7. Petitioner and his attorney appeared for the hearing, but Respondent did not.

CONCLUSIONS OF LAW

Subsection 7j(10) of the CPL, MCL 722.627j(10), describes the circumstances when placement on the Central Registry is required and when it is not. It provides in relevant part as follows:

(10) If the investigation of a report conducted under this section does not show serious child abuse or child 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 . . . MCL 712A.2(b), because the [Department] 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. If a preponderance of evidence of child abuse or child neglect exists, or if a court takes jurisdiction of the child under . . . 712A.2(b), the [D]epartment must maintain the information and must maintain the perpetrator's information in the [C]entral [R]egistry if the case is determined to be a confirmed case of methamphetamine production, confirmed serious abuse or neglect, confirmed sexual abuse, or confirmed sexual exploitation. This subsection does not apply to an individual for which the court has entered an order of conviction described in subsection (3).

At the hearing, Petitioner's attorney explained that a CPS investigation commenced on [REDACTED] 2021, following allegations against Petitioner of child abuse and neglect to Child A, a [REDACTED]-year-old at the time of the investigation who resided with her biological mother in Midland County. These allegations resulted in Respondent filing a child protective proceedings petition against Petitioner in the [REDACTED] County Probate Court. Because Petitioner had another minor daughter, Child B, then a [REDACTED]-year-old living with her biological mother in [REDACTED] County, a second petition was filed in [REDACTED] County Probate Court based on the allegations in the petition filed in [REDACTED] County. According to Petitioner's attorney, Petitioner denied the allegations in each of the petitions and requested adjudicatory trials in each court. Prior to the trials commencing, the prosecutors withdrew the petitions in both the [REDACTED] County and [REDACTED] County Courts.

According to Petitioner's attorney, because the petitions were withdrawn, there was no adjudicatory trial in either the [REDACTED] County Probate Court or the [REDACTED] County

Probate Court, and neither Child A nor Child B were taken into the court's custody. As such, there is no basis for placement on the Central Registry subsection 7j(10) of the CPL because of a court adjudication in a child protective proceeding.

Although the petitions were dismissed, the dismissals were due to the withdrawal of the petitions. Because the court did not assess the merits of the petitions, the courts' dismissal of the petitions did not require that Petitioner's name be expunged from the Central Registry under subsection 7j(10) of the CPL. However, in order to maintain Petitioner's name on the Central Registry in the absence of an adjudication on the merits of the petitions, Respondent would have to show that there was a preponderance of evidence that the case against Petitioner involved a confirmed case of methamphetamine production, confirmed serious abuse or neglect, confirmed sexual abuse, or confirmed sexual exploitation.

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 report or record in whole or in part meets the statutory requirement of confirmed serious abuse or neglect of the child, confirmed sexual abuse of the child, confirmed sexual exploitation of the child or a confirmed case of methamphetamine production as defined by the CPL. MCL 722.627j(9) and (10). 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).

In this matter, the parties were properly served with notice of the proceeding, but Respondent failed to appear for hearing. Consequently, Respondent failed to meet its initial burden of showing that there was a preponderance of evidence of confirmed serious abuse or neglect, confirmed sexual abuse, confirmed sexual exploitation, or a confirmed case of methamphetamine production. MCL 722.627j(9). As such, Respondent failed to establish that Petitioner was properly placed on the Central Registry.

Because Respondent did not satisfy its initial burden of proof to show that placement of Petitioner's name on the Central Registry for the CPS complaint or referral date of October 22, 2021 was required by the CPL, it is the ruling of this ALJ that Petitioner's name was not properly placed on the Central Registry.

ORDER

NOW THEREFORE, IT IS ORDERED that:

- 1) Respondent's decision to continue Petitioner's placement on the Central Registry for complaint or referral date of October 22, 2021 is hereby **REVERSED**.
- 2) Respondent is hereby **ORDERED** to expunge Petitioner's name from the Central Registry for the complaint or referral date of October 22, 2021, within 10 days of the date of mailing of this Decision and Order.



Alice C. Elkin
Administrative Law Judge

APPEAL RIGHTS: A party who disagrees with this Hearing Decision may send a written request for a rehearing or reconsideration to the Michigan Office of Administrative Hearings and Rules (MOAHR) within 60 days of the mailing date of this Decision and Order. The written request should include Petitioner's name, the docket number from caption of this Decision and Order, an explanation of the specific reasons for the request, and any documents supporting the request. Send the request to MOAHR

- by email to MOAHR-BSD-Support@michigan.gov, **OR**
- by fax at (517) 763-0155, **OR**
- by mail addressed to
Michigan Office of Administrative Hearings and Rules
Rehearing/Reconsideration Request
P.O. Box 30639
Lansing Michigan 48909-8139

Requests MOAHR receives more than 60 days from the mailing date of this Hearing Decision may be considered untimely and dismissed.

Petitioner may also appeal this Hearing Decision to the circuit court.

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 23rd day of March 2023.



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

Via-Electronic Mail :

Respondent

MDHHS Expunction Unit
235 S Grand Ave Suite 1518
Lansing, MI 48933
DHHS-Expungement-Unit@michigan.gov

Interested Party

MDHHS-Children's Legal Services Division
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PO Box 30195
Lansing, MI 48909
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Via-First Class Mail :

Petitioner

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Petitioner's Attorney

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