



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.: 22-006306-RECON**

██████████

**Petitioner**

**Agency Case No.:** ██████████

**Case Type:**

**Expunction**

**v**

**MDHHS Expunction Unit,  
Respondent**

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**Issued and entered  
this 23<sup>rd</sup> day of May, 2023  
by:  
Alice C. Elkin  
Administrative Law Judge**

**ORDER DENYING  
RESPONDENT’S MOTION TO VACATE DECISION AND ORDER  
AND REQUEST FOR REHEARING**

On ██████████ 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Respondent’s Motion to Vacate Decision and Order and Request for Rehearing (Motion), filed by Chantal Fennessey, Assistant Attorney General (AAG) representing Respondent Michigan Department of Health and Human Services. The Motion sought to vacate the Decision and Order issued by the undersigned on ██████████ 2023 (Decision) after a hearing held without Respondent’s participation and to grant a rehearing. The Decision ordered Respondent to expunge Petitioner ██████████ name from the Michigan Child Abuse and Neglect Central Registry (Central Registry) for a placement associated with a Child Protective Services (CPS) complaint dated ██████████ 2021.

In the Motion, Respondent seeks a rehearing on the basis that it had good cause for failing to appear and that the Decision ordering that Petitioner’s name be expunged from the Central Registry was extreme and not supported by the evidence. Under the Uniform Administrative Hearing Rules, Mich Admin Code, R 792.10101 *et seq.*, if a party fails to appear to a hearing and the administrative law judge (ALJ) enters a default

judgment, 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. 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.* Additionally, the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, provides a party with the right to request a rehearing within the time fixed for instituting proceedings for judicial review. MCL 24.287. 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 (██████████ 2022), p. 11. MOAHR determines if a rehearing or reconsideration will be granted. PSM 717-3, p. 11.

In this case, Petitioner requested a hearing to have his name expunged from the Central Registry in connection with CPS complaint dated ██████████ 2021 and indicated in his hearing request that he would be represented by counsel. On ██████████ 2023, MOAHR received a hearing packet from Respondent containing, in part, Petitioner's hearing request. MOAHR scheduled the hearing on ██████████ 2023 at 1:30 pm and sent Notices of Hearing to Respondent and Petitioner. The Notices advised the parties that if they did not call or connect to the hearing within 15 minutes of the scheduled time, the hearing could proceed in their absence and a decision issued.

On ██████████ 2023, Petitioner appeared at the hearing along with his attorney, Matthew Reyes, at 1:30 pm, the scheduled start for the hearing. 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. After delaying commencement of the hearing for 15 minutes, the undersigned proceeded with a default hearing pursuant to 72(1) of the APA, MCL 24.272(1), and Rule 134 of the Administrative Hearing Rules, Mich Admin Code, R 792.10134. Finding that Respondent had, in its absence, failed to present a preponderance of evidence that Petitioner was the perpetrator of confirmed serious abuse or neglect, confirmed sexual abuse, confirmed sexual exploitation, or a confirmed case of methamphetamine production, the undersigned issued the Decision reversing Respondent and ordering Respondent to expunge Petitioner's name from the Central Registry. MCL 722.627j(9).

It is noteworthy that in its Motion for rehearing Respondent does not suggest any error by MOAHR with respect to the Notice of Hearing sent to the parties. MOAHR sent the Notice of Hearing to the parties of record, to Respondent's expunction unit via email, and to Petitioner via physical mail. At the time that the Notice of Hearing was sent, there were no appearances on file with MOAHR. Contrary to the AAG's assertion, MOAHR does not have a general policy to adjourn a hearing when a petitioner appears at the hearing with counsel. Petitioner had identified counsel in his hearing request so Respondent was on notice that Petitioner might be represented. Furthermore, an ALJ may elect to adjourn a hearing when a party who appears requests an adjournment and

establishes that it was not aware that the opposing party would be represented and is disadvantaged by not having counsel themselves. None of these circumstances were present in this case.

In its request for rehearing, the AAG argues that Respondent, through its filing of a hearing packet with a hearing summary, witness list, exhibits, and policy and law, had demonstrated its intent to proceed with the hearing and thus had good cause for its failure to participate in the hearing. The submission of a hearing packet and an intention to participate in a hearing does not provide a good cause explanation for Respondent's failure to appear or contact MOAHR prior to the hearing. Further, contrary to the AAG's position, the hearing packet Respondent submitted to MOAHR was very sparse, containing only the hearing summary, a copy of the notice of placement sent to Petitioner, Petitioner's hearing request, and a printout from Respondent's Michigan Statewide Automated Child Welfare Information System (MiSACWIS), showing Petitioner's placement on the Central Registry. The hearing packet did not contain substantive documents commonly filed with expunction hearings, such as the CPS investigation report and, in this case, the petitions and orders from the two courts referenced by Petitioner's attorney.

The AAG also argues that the Decision was contrary to MCL 24.285 because it was not "supported by and in accordance with the competent, material and substantial evidence," noting that there were no documents admitted into evidence. Although the AAG cites MCL 24.287(2) to support the request for rehearing when a record is "inadequate for judicial review," the record was developed based on the parties present at the hearing and evidence presented at the hearing, and any inadequacy in the record was due to Respondent's failure to appear and present its case. At the hearing, Petitioner's counsel did not request admission of any of the documents from the hearing packet into evidence and did not submit any other documents for admission. Considering the burden was on Respondent to establish by a preponderance of the evidence support for the Central Registry placement, Petitioner was not obligated to admit any documents. Respondent was not present to present any documents for admission. Further, as noted above, the documents submitted by Respondent as part of its hearing packet did not contain any substantive information concerning the basis for Respondent's placement on the Central Registry.

Finally, Respondent argues that the decision to expunge Petitioner's name from the Central Registry was extreme given that Respondent was cooperative and had participated in all proceedings prior to the administrative hearing. A review of the MOAHR records show that there were no proceedings in this case prior to the administrative hearing on [REDACTED] 2023. Accordingly, there was no evidence of prior cooperation. Further, the APA and the administrative hearing rules expressly allow a hearing to proceed in the absence of a party and provide for disposition of a contested case via default. MCL 24.272(1); MCL 278(2); and Mich Admin Code, R 792.10134.

Thus, a decision based on the evidence presented or arguments made by one party to the action when the other fails to appear is anticipated, and supported, by the APA and the hearing rules.

For the reasons identified herein, the Motion to Vacate Decision and Request for Rehearing is **DENIED**.

**IT IS SO ORDERED.**

  
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**Alice C. Elkin**  
Administrative Law Judge

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules.

**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 23<sup>rd</sup> day of [REDACTED] 2023.

*A. Mehi*

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A. Mehi, Legal Secretary  
**Michigan Office of Administrative  
Hearings and Rules**

**Via-Electronic Mail :**

**Counsel for Respondent**

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**Respondent**

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**Interested Party**

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**Via-First Class Mail :**

**Petitioner**

[REDACTED]  
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