



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.: 22-006273-RECON

██████████
Petitioner

Agency Case No.: ██████████

v

Case Type: Expunction

**MDHHS Expunction Unit,
Respondent**

_____ /

**Issued and entered
this 28th day of April 2023
by: Amanda M. T. Marler
Administrative Law Judge**

ORDER DENYING RESPONDENT’S REQUEST FOR REHEARING

AND

ORDER OF DISMISSAL

The request for rehearing or reconsideration filed by Assistant Attorney General (AAG), Charlie Cavanagh, on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS), on April 7, 2023, of the March 28, 2023, Decision and Order issued by the undersigned Administrative Law Judge (ALJ) has been received and reviewed.

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 (November 2022), p. 11. A reconsideration is a paper review of the facts, law and any new evidence or legal arguments. *Id.* Reconsideration of a Decision and Order may be granted when the original hearing record is adequate for judicial review. *Id.*

When a party fails to appear to a hearing and the 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,

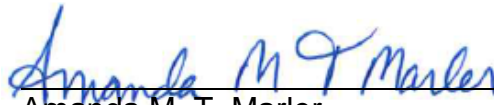
the matter may be rescheduled, reheard, or otherwise reconsidered as required to serve the interests of justice and the orderly and prompt conduct of proceedings. *Id.*

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] 2022. On January 6, 2023, Respondent filed a Hearing Summary with Michigan Office of Administrative Hearings and Rules (MOAHR) with Petitioner's request attached. On February 2, 2023, MOAHR issued a Notice of Hearing scheduling a Zoom videoconference hearing for March 15, 2023 at 9:00 AM. On February 6, 2023, Assistant Attorney General, Lindsey Lavine filed an appearance in this matter and sent a copy to Petitioner's attorney via email.

The hearing was held as scheduled. Petitioner and Attorney, John Tosto appeared. Respondent did not appear for the hearing nor did Assistant Attorney General Lavine nor any other representative on behalf of Respondent. The hearing was held in Respondent's absence after Respondent failed to appear within five minutes of the scheduled start time. The hearing concluded at 9:15 AM and neither Respondent nor Ms. Lavine had appeared by the conclusion of the hearing.

In the request for rehearing, AAG Cavanagh argues that the previously assigned AAG did not appear for the hearing because the previous AAG had filed her appearance after the notice of hearing was issued in this case. There is no disputing this fact and it was stated in the original decision. However, what AAG Cavanagh fails to point out is that notice was properly issued to Respondent, the client of the AAG. Pursuant to the Administrative Procedures Act, MCL 24.271(1-2), the parties in a contested case shall be given an opportunity for a hearing without undue delay with reasonable notice of the hearing including the date, hour, place, and nature of the hearing. In this case, notice was issued to Respondent 41 days in advance of the hearing. Furthermore, Respondent was informed that the hearing would be held at 9:00 AM on March 15, 2023 via Zoom videoconference with the access information listed in the notice. Respondent was informed of the hearing in accordance with the hearing rules and had ample opportunity to confer with counsel. It is the client's responsibility to communicate with the Attorney General's Office and vice versa. It is not uncommon for attorneys to file appearances after notices of hearing are issued and, in many cases, the filing of an appearance suggests that the client has spoken with the attorney and requested the attorney's representation at hearing. Once an appearance is filed by any attorney on behalf of any party, that attorney then receives any and all communications from MOAHR pursuant to the administrative hearing rules. R 792.10107(1). MOAHR cannot assume that any party is represented by an attorney and as result, only issues notices to the parties themselves and those attorneys who have filed appearances before the

notice is issued. Respondent's failure to communicate with its counsel, who had not yet filed an appearance with MOAHR when the notice of hearing was issued, is not good cause for a rehearing.



Amanda M. T. Marler
Administrative Law Judge

NOTICE: Within 60 days after the date of mailing of this Order Denying Respondent's Request for Rehearing and Order of Dismissal, 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 28th day of April 2023.



Tammy L. 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
333 S Grand Ave 5th Floor
PO Box 30195
Lansing, MI 48909
CSARequestforLegalResearch@michigan.gov

Via-First Class Mail :

Petitioner

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