

STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ADMINISTRATIVE LAW HEARINGS PROTOCOL

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Administrative Law Hearings Protocol

****Note:** Throughout this protocol, the person requesting expunction from central registry or an administrative hearing will be referred to as the “petitioner”.

I. Receipt of the Expunction Request

Per Public Act 30 of 2014, all requests for expunction are also to be considered requests for an administrative hearing. It is crucial that the office in receipt of the expunction request takes the following steps to ensure that cases are reviewed properly and all administrative hearings are handled correctly.

- A. Date stamp the expunction request within **one day of receipt**. Input the request into The Michigan Statewide Automated Child Welfare Information System (MiSACWIS.) ****Step-by-step instructions on how to input this information into MiSACWIS can be found under the MiSACWIS help and training link by following these prompts: Home > Investigations > Amendment > Expungement.**
- B. Conduct case clearance to confirm that petitioner is listed on central registry. The clearance must include checks of MiSACWIS and Bridges.
- C. If the request was sent to a local office in error (for example, if the substantiation occurred in another county) a supervisor should forward the original expunction request to the supervisor in the county where the substantiation occurred or to the supervisor at Children’s Protective Services – Maltreatment In Care (CPS-MIC), if applicable. If necessary, the request must be forwarded within **two business days**. In forwarding the request, staff must send (i) a scanned copy of the request via email, and (ii) the original request via ID or U.S. mail.
- D. If there are substantiations in multiple counties, a supervisor should forward a copy of the expunction request to the supervisor in each county where substantiation occurred, or to the supervisor at CPS-MIC, if applicable. If necessary, the request must be forwarded within **two business days**. In forwarding the request, staff must send (i) a scanned copy of the request via email, and (ii) a copy of the original request via ID or U.S. mail.

II. Supervisor Review of Expunction Request

- A. Whenever possible, the supervisor assigned to conduct the initial case review **should not** be the supervisor who approved the initial investigation/ disposition.
- B. PSM 717-2 requires that when reviewing an expunction request, the local office **must** consider an amendment or expunction when the case record reveals:
 - 1. Errors in fact or missing information which can be corrected.
 - 2. Weak supporting evidence that would not withstand the evidentiary standards of an administrative hearing (for example, allegations that could not be proven by a preponderance of the evidence.)

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3. Unavailability of witnesses or relevant case records.
- C. During the review process, staff must refer to the policy that was in effect at the time of the complaint in question.
 - D. Prior to deciding whether to expunge the petitioner, utilize the Expunction Request Review Checklist (Attachment A) to ensure that all necessary steps have been completed. File this form in the legal section of the CPS record.
 - E. A recommendation to expunge or deny must be reviewed and approved by a second-line manager. If possible, the second-line manager should conference with the reviewing supervisor and investigative supervisor before making a decision. The second-line manager's approval of the recommendation, if given, must be documented on the expunction request review checklist.
 - F. When petitioner was placed on central registry for a Category I case with court adjudication, the following steps must occur:
 1. Review case to ensure that petitioner was identified as a perpetrator in the disposition.
 2. Review court records to determine if the court made a finding of fact that petitioner committed abuse or neglect.
 3. If decision is made to expunge petitioner, the County Director must approve and note approval on the expunction request review checklist.
 - G. The final decision of petitioner's expunction request must be (i) made within 30 days of receipt of request; (ii) documented on the DHS-1200; and (iii) mailed to petitioner, with the date mailed entered as a social work contact in MiSACWIS.
 1. If the decision is to expunge petitioner, staff must:
 - a. Promptly remove the petitioner's name from central registry on MiSACWIS.
 - b. Complete an addendum in MiSACWIS indicating that petitioner has been expunged from central registry.
 2. If the decision is to maintain petitioner on central registry, staff must:
 - a. Hold a prehearing conference with petitioner, and document the conference on the expunction request review checklist. A prehearing conference provides both the petitioner and MDHHS the opportunity to discuss their position, allows for additional information gathering, and may deter the petitioner from moving forward with an administrative hearing.
 - b. Inform petitioner that an administrative hearing will be scheduled to decide petitioner's expunction request.
 - c. Advise petitioner that if he/she wishes to withdraw the hearing request, he/she must do so **in writing** on the DHS-1200.

H. Note: Any perpetrator placed on central registry after March 31st, 2015, has 180 days from the date of service of notification of placement on central registry to request expunction. If petitioner's expunction request is received after that deadline, staff must:

1. Determine if the request was received within 60 days of the 180-day deadline. If the request received within 60 days after the 180-day deadline, determine if good cause existed to justify petitioner's late request. If not, inform petitioner that (i) the expunction request has been rejected as untimely because petitioner did not establish good cause for the request to be submitted after the 180-day deadline, and (ii) an administrative hearing will not be scheduled.
2. If request received within 60 days of 180-day deadline, and petitioner demonstrated good cause for submitting the request after the deadline, proceed with case review as detailed in this section.

III. Supervisor Review of Expunction Request for Petitioner Placed on Central Registry 10 or more Years Prior to Request for Expunction

When Public Act 30 of 2014 becomes effective in March of 2015, a perpetrator of child abuse or neglect is to remain on central registry for no more than 10 years, unless the abuse or neglect is classified as egregious (as outlined below). This section applies to expunction requests received after March 31st, 2015.

- A. Upon receipt of an expunction request from a petitioner who had been placed on central registry more than 10 years prior, the reviewing supervisor must determine if petitioner was placed on central registry or parental rights were terminated due to the petitioner's egregious act. The recognized egregious acts are:
1. Abandonment of a young child.
 2. Criminal sexual conduct of a child.
 3. Battering, torture, or other severe physical abuse.
 4. Loss or serious impairment of an organ or limb.
 5. Life threatening injury.
 6. Murder or attempted murder.
 7. Termination of parental rights in Michigan or another state due to the reasons listed above or (i) voluntary manslaughter, or (ii) aiding and abetting, attempt to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.
 8. Contact with or exposure to methamphetamine production.
- B. If petitioner committed one or more of the egregious acts, the reviewing supervisor should determine if petitioner's continued placement on central registry is appropriate. The reviewing supervisor must apply PSM 717-2 as outlined in Section II(b) of this protocol.

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- C. If the reviewing supervisor determines that a petitioner who committed an egregious act should be expunged, the supervisor must follow the steps found in Sections II(d), II(e), and II(g)(1) of this protocol.
 - D. If petitioner did not commit one or more of the egregious acts, the reviewing supervisor must promptly remove petitioner from central registry as outlined in Section II(g)(1) of this protocol.

IV. Scheduling an Administrative Hearing after Denial of an Expunction Request

- A. If petitioner has not withdrawn his/her request for an administrative hearing as of the conclusion of the prehearing conference, staff must **immediately** submit a request for an administrative hearing to the Michigan Administrative Hearing System (MAHS).
- B. To do so, send (i) the DHS-3050, (ii) the original DHS-1200, and (iii) petitioner's expunction request to MAHS via ID mail at the following address:

MAHS
611 West Ottawa, 2nd Floor
P.O. Box 30695
Lansing, MI 48909
Attn: Marya Nelson-Davis

If ID mail is not available, these documents should be faxed to Marya Nelson-Davis at 517-335-6088.

- C. If petitioner informs MDHHS that he/she has attorney representation, MDHHS must request Attorney General (AG) representation. The following steps must occur:
 - 1. Complete the DHS-1216-E and scan/email it to MDHHS Children's Legal Services along with any other necessary materials. The email address is: CLSRequestsforRepresentation@michigan.gov.
 - 2. Identify on the DHS-1216-E that it is a children's services hearing.
Note: The AG may reject requests for representation submitted less than two weeks of the scheduled hearing.
Note: The assistant attorney general (AAG) assigned to represent MDHHS will determine how the case is prepared and presented. The AAG's decisions may not follow the instructions of this protocol.
- D. On occasion, petitioner will be on central registry in multiple counties. When petitioner submits an expunction request to one county, which results in the scheduling of an administrative hearing, MDHHS is to treat the request as a request to expunge all central registry listings. Thus, the county in receipt of the original expunction request is to take the lead in coordinating with supervision in all other counties. Evidence, case records, and witnesses for all central registry listings must be available at the hearing.

V. Motions

Once an administrative hearing is scheduled, if MDHHS wishes to make a request to MAHS concerning the hearing, it must do so through a written motion. The submission of a motion requires the following steps:

- A. Provide a copy of the motion to petitioner.
- B. Fax or mail the motion to MAHS. The motion must include the assigned docket number, which can be located on the Notice of Hearing. Include with the motion a proof of service to verify that MDHHS mailed the motion to petitioner. (See Attachment C for an example of a proof of service.)
- C. Input the motion and proof of service into MiSACWIS.

Note: While mailing is the most common method of giving a motion to petitioner, hand-delivery is acceptable, and other methods such as fax or email can be used if MDHHS has successfully communicated with petitioner on other occasions using that method. Make sure that the proof of service accurately reflects which method was used.

The following is a list of motions that may be needed (please see Attachment D for examples of motions):

1. **Adjournment.** This motion is used when the presenter or a necessary witness is unavailable on the scheduled hearing date. Acceptable reasons for unavailability include hospitalization, another hearing/trial, or a pre-planned vacation for which tickets have been purchased. Unacceptable reasons for unavailability include minor health issues, trainings or conferences, or personal engagements.

Note: A second line supervisor must approve an adjournment request.
2. **Change in venue or time.** This motion is used when the hearing location or start time for the hearing is inconvenient to most or all witnesses. The judge is unlikely to grant a motion for a change of venue, and if the judge grants a motion for change in time, the change is likely to be no more than an hour or two later. MDHHS is responsible for informing witnesses of the change in venue/time.
3. **Telephone testimony.** This motion is used when it is impractical for the witness to attend the hearing in person. For example, it may be impractical for an emergency room doctor to travel across the state, or for a witness to travel from out of state, to attend the hearing in person. Judges do not consistently grant this motion.
4. **Cancel/dismiss hearing.** This motion is used when either petitioner or MDHHS no longer wants the hearing.

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- a. Petitioner may withdraw his/her request for hearing at any time before the judge issues the Decision and Order. MDHHS should direct petitioner to notify MAHS in writing as outlined in the Notice of Hearing. MDHHS could also have petitioner sign the DHS-1200, then submit a motion to cancel the hearing along with the completed DHS-1200.
 - b. Please see Section VI introduction for why MDHHS may wish to cancel the hearing. If so decided, MDHHS should take the following steps:
 - (i) Complete the Notice of Expunction and provide petitioner with a copy.
 - (ii) Expunge petitioner from central registry.
 - (iii) Submit motion to MAHS with a copy of the Notice of Expunction.
 - (iv) Inform witnesses that the hearing has been adjourned.
 - c. All motions should be submitted to MAHS no later than two weeks prior to the scheduled hearing, unless extenuating circumstances require immediate notification. MAHS will issue a written order in response to all motions. Until and unless the judge issued an order granting the motion, MDHHS must proceed as if the judge has denied the motion.

Note: If petitioner appears at hearing with counsel, and MDHHS had no prior notice of counsel, MDHHS must inform the judge that it is requesting an adjournment of the hearing in order to obtain AG representation.

VI. Hearing Preparation

The hearing presenter must continually assess the strength of the case. As information in the report is double-checked, or new information is learned, statements and/or assumptions made in the report may be challenged or contradicted. Also, necessary witnesses may be unwilling or unable to testify. If at any point the presenter believes that some or all of the allegations cannot be supported by a preponderance of the evidence, he/she must conference with second-line supervision and/or county director to discuss expunction or amendment of the record.

- Local offices may request the CPS program office to conduct a case review by sending an email to: ALJreconsiderations@michigan.gov
- If MDHHS decides to expunge a record after a hearing has been scheduled, refer to Section V(d)(2) for instructions.

A. Documents needed

1. The following is a partial list of documents commonly needed at hearing: investigation report; risk assessment; central registry printout; certified mail receipts; expunction request; medical reports; policies and/or Child Protection Law (CPL); photographs; and police reports. See PSM 717-3 for further examples.
2. If the documents are not in the file, it is the presenter's responsibility to acquire them. If there is AG representation, the presenter is to coordinate with the assigned AAG to obtain the documents.
3. Ensure that all documents have the required signatures, as applicable.

B. Which witnesses will be needed to testify

1. The goal is to call witnesses who have direct knowledge of the incidents in question (for example, the people who observed the incident). Sometimes a child is the only witness with direct knowledge. Whether to call a child is a case-by-case determination; factors to consider include the child's age, ability, and emotional stability. Child witnesses must be established as competent by the ALJ to testify.
2. For documents, the goal is to call as a witness the person who wrote and/or signed (most likely the same person) the document. This is the best person to testify that the document is authentic. If the drafter and/or signer of the document is unavailable to testify, another agency representative must be called who can authenticate the document. This is true for all documents, whether from MDHHS or outside agencies.
3. In determining which witnesses to call, realize that while the judge is allowed to accept hearsay evidence, he/she may refuse to do so. Hearsay evidence is indirect evidence used to prove the truth of the matter asserted.

C. Locate and speak to witnesses

1. Speak to all witnesses prior to the hearing.
2. While speaking to the witness, determine if the witness:
 - a. Agrees with the statements attributed to him/her in the investigation report.
 - b. Has recanted any or all of his/her previous statements.
 - c. Agrees to willingly testify at the hearing. An uncooperative witness can hurt the case more than help it.
 - d. Is available to testify on the hearing date and time and at the hearing location.

D. Subpoena witnesses

1. Determine if each witness requires a subpoena.
 - a. MDHHS employees do not require a subpoena.
 - b. Other State of Michigan employees usually do not require a subpoena.
 - c. Nongovernmental employees will usually require a subpoena, unless the testimony is related to his/her employment. For example, a foster care worker from a private agency does not require a subpoena to testify about his/her professional involvement with a foster child.
 - d. All witnesses must be given notice that his/her presence is required at the hearing.
 2. If unsure whether or not a witness requires a subpoena, discuss the matter with supervision and the witness.
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3. For requesting subpoenas, follow PSM 717-3, page 4. Note: MAHS will not process subpoenas from witness lists submitted with the DHS-3050 or DHS-1200.
 4. Ensure proper delivery of the subpoena. A cooperative witness may receive the subpoena via the mail. If unsure of a witness's willingness to testify, or you know the witness is unwilling to testify, the witness must be personally served with the subpoena.
 5. For witness and mileage fees, seek payment through local office funds.

E. Prepare hearing questions

1. Review Attachment E for example hearing questions.
2. Write hearing questions in whatever format is most helpful for hearing presentation. However, questions should be written in a manner that will elicit the information from witnesses needed to substantiate the case findings by a preponderance of the evidence.
3. Provide each witness with the proposed hearing questions at least two weeks prior to the hearing. Be clear that the questions are not instructions for how the witness is to testify; rather, the questions explain MDHHS's understanding of how the witness will testify, and they can be changed if inaccurate.
4. Discuss each question and answer with each witness. Listen for differences in the witness's answers from what was reported in the investigative report. It is also a good practice to ask each witness if he/she knows of any other witnesses who could be helpful.

Note: If an AAG is representing MDHHS, the presenter is not responsible for drafting or distributing hearing questions to the witnesses.

F. Miscellaneous preparations

1. Make sure each witness knows where the hearing is located, and ask each witness to appear at the hearing on time. Inform the witness of parking options, how/where to enter the building (have photo ID, for example), and how to find the hearing room.
2. Provide each witness with a cell phone number to call on the day of the hearing if any problems arise.
3. Exhibits are the documents to be presented at hearing. Bring four copies of each exhibit to the hearing. Each document must be marked as an exhibit using a "Respondent's Exhibit" sticker. The sticker should be placed on each document in an area that does not cover any writing. These stickers can be found in the hearing room. Note: While copies of each exhibit are given to each party at the hearing, copies of the proposed exhibits should also be provided to petitioner, when possible, seven days prior to the hearing.

Note: On occasion, the AAG may present a settlement opportunity to the county representative (supervisor, program manager, director). If the county representative does

not agree with the settlement offer, the matter should be referred to the Office of Legal Services and Policy and the CPS program office for review.

VII. Rehearing/Reconsideration Requests

Upon receipt of the judge's Decision and Order, MDHHS can request a rehearing or reconsideration when it believes something about the Decision and Order is incorrect. In essence, MDHHS is appealing the Decision and Order. MAHS will grant or deny the request for rehearing or reconsideration.

Rehearing is a full hearing which is granted when the original hearing record is inadequate for purposes of judicial review, or there is newly discovered evidence that could alter the outcome of the original hearing.

Reconsideration is a judicial review of the hearing record conducted when the hearing record is sufficient for review. For reconsideration, a new hearing is not required to make a decision.

- A. Review with supervision any Decision and Order that expunges petitioner from central registry. Determine if there are grounds to seek rehearing or reconsideration. CPS Program Office can be consulted to help with the decision process, by contacting ALJreconsiderations@michigan.gov.
- B. MDHHS should seek rehearing or reconsideration in the following instances:
 - 1. The judge misapplied the law to the facts of the case.
 - 2. The judge failed to address relevant issues that were raised at hearing.
 - 3. New evidence was found which could alter the judge's findings.
- C. Submit a request for rehearing or reconsideration to the CPS Program Office at ALJreconsiderations@michigan.gov. See Attachment F for an example of a reconsideration request.
- D. CPS Program Office will forward to MAHS the request for rehearing or reconsideration if it agrees with the request. If an AAG presented at hearing, CPS Program Office will request the AAG to file with MAHS the request for rehearing or reconsideration.
- E. **MAHS must receive a request for rehearing or reconsideration within 60 days of the issuance of the Decision and Order.**
- F. MAHS will issue a written order through which it will grant or deny the request for rehearing or reconsideration.
 - 1. If MAHS grants a rehearing, it will schedule and conduct a new hearing. While the new hearing is pending, MDHHS must follow the Decision and Order unless instructed by MDHHS Children's Legal Services or AG not to do so.

2. If MAHS grants reconsideration, it will modify the Decision and Order unless it requires further testimony.

G. Petitioner may appeal the Decision and Order to circuit court. If the local office receives documentation from petitioner which indicates an appeal to circuit court (e.g., a subpoena or notice of complaint), it must send the documentation to:

MDHHS Office of Legal Services & Policy
235 South Grand Avenue, 4th floor
Lansing, MI 48933
Phone: (517) 373-2082
Fax: (517) 241-7340

VIII. Administrative Hearing Coordination between CPS-MIC and the Bureau of Child and Adult Licensing (BCAL).

The information in this section applies only to CPS-MIC. However, CPS-MIC is to follow the entire protocol in handling expunction requests; this section alone is not intended to explain that process.

The instructions that follow in this section focus primarily on the need for CPS-MIC and BCAL to communicate about pending administrative hearings.

Note: If at any point in this process CPS-MIC expunges petitioner from central registry, it must notify BCAL. Likewise, if BCAL enters into a settlement agreement regarding petitioner's license, it must notify CPS-MIC.

Note: All settlement agreements must be pre-approved by the Children's Services Administration director.

Initial Hearing Decisions

- A. CPS-MIC supervisor must contact BCAL within two business days of petitioner requesting an expunction hearing.
- B. CPS-MIC and BCAL will conduct a joint hearing whenever feasible. A joint hearing will not occur if the CPS-MIC supervisor and BCAL analyst agree that joining the hearings would cause burdensome delays or negatively affect one hearing. In case of disagreement, the decision will be made by the CPS-MIC manager and the BCAL division director. If disagreement persists, the decision must be referred to the Office of Legal Services and Policy.
- C. If petitioner retains counsel for the CPS or BCAL hearing, CPS-MIC and BCAL must immediately and independently request AG representation. CPS-MIC must send all materials, including the DHS-1216-E, to the Office of Legal Services and Policy at CLSRequestsForRepresentation@michigan.gov, and note on the DHS-1216-E that the hearing is being held jointly with BCAL.

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- D. CPS-MIC is to conduct a prehearing conference as detailed in Section II. BCAL will conduct its own prehearing conference.
 - E. CPS-MIC and BCAL submit independent requests for hearing. On the DHS-3050, CPS-MIC must note that:
 - 1. The case is affiliated with CPS-MIC, and list the contact information for the appropriate MIC staff.
 - 2. There is a related BCAL case, and list the docket number for the BCAL hearing if available.

Hearing Preparation and Presentation

- F. CPS-MIC must conference with BCAL within five days of a hearing being scheduled. During the initial conference, CPS-MIC and BCAL must decide who will take the lead in hearing matters.
- G. Note: CPS-MIC and BCAL are always responsible for their own hearing preparations. The party that takes the lead is responsible for general duties such as subpoena requests and filing motions. In performing these general duties, the lead party is to note that other party joins in the action.
- H. During the initial conference and during subsequent conversations, CPS-MIC and BCAL should discuss the following:
 - 1. Any “conflicts”, such as discrepancies on how witness statements were recorded in the investigation reports, or differences in opinion as to a witness’s credibility or the strength of the case.
 - 2. The witnesses who need to testify at the hearing.
 - 3. The documents that need to be admitted into evidence.
 - 4. How the parties will communicate at the hearing.
- I. Administrative Law Judges generally have CPS-MIC present its case first. CPS-MIC will call its witnesses, and BCAL will be able to ask each witness additional questions. Once CPS-MIC rests, BCAL will call any witnesses specific to its case.

Coordination of Witness Fees

- J. CPS-MIC is responsible for the fees owed any witness called specifically for its case. BCAL is responsible for the fees owed any witness called specifically for its case.
- K. If CPS-MIC and BCAL would have called the same witness, each pays 50% of the fees associated with that witness.

Expunction Request Review Checklist

- Case Clearance: SWSS/MISACWIS– Check Central Registry and previous history for all known names
- Read Report(s)/DHS154
 - For perpetrators who have been placed on central registry for 10 or more years, determine if placement on central registry was due to an egregious act committed by the petitioner.
 - If not, expunge the perpetrator immediately.
 - If so, continue with review prior to making expunction decision.
- Policy Review – Review policy that was in place at time of the original investigation.
- Review Risk Assessment associated with DHS154 – Were questions answered correctly? Is information used to support those risk factors located in the DHS154?
- Read/Review Evidence:
 - o Police Reports
 - o Witness Statements – Are statements credible?
 - o Court findings of fact – Review family court decisions to see if the court made findings of fact that abuse or neglect occurred in the underlying abuse or neglect case.
 - o Conference with worker and supervisor who completed/approved the report, if available.
 - o Review forensic interview/Children’s Assessment Center (CAC) – Is there a videotape/report/case documentation that proves credible disclosure?
 - o Medical Reports – Are reports consistent with findings? Are there discrepancies between reports? Is the finding defensible based on evidence?
 - o Photos – Are they in the file? Are they correctly identified? Are they usable?
 - o Psychological/psychiatric evaluations/therapy reports – Do they support the disposition?

Expunction Decision:

- Amendment to correct inaccurate information, specifically: _____

- Expunction:
 - Errors in fact or missing information
 - The supporting evidence in the case file was weak and would not withstand the evidentiary standards of an administrative hearing
 - Witnesses or case records are unavailable
 - Placement on Central Registry for 10 or more years for a non-egregious act.
- Denial of Expunction Request
- Conducted pre-hearing conference Date: _____
- Date DHS1200 Sent: _____

Approved by:

Reviewing Supervisor: _____

Case conference date: _____

2nd Line Manager: _____

Case involved family court adjudication: Case conference date: _____

Local Office Director Approval: _____

HEARING SUMMARY
Michigan Department of Human Services

Case Name: **JANE DOE**
Case Number: **YxxxxxxxP**
Date: **11/04/2013**
DHS Office: **INGHAM COUNTY DHS**
Specialist: **John Smith**
Phone: **517 333-1234**
Fax: **517 333-4321**
Specialist ID: **SmithJ19**

If you do not understand this, call a DHS office in your area.
DHS employees are prohibited by law from providing legal advice.
Si Ud. no entiende esto, llame a su oficina local del Department of Human Services.
La ley prohíbe a los empleados de DHS proporcionar asesoría legal.
إذا واجهت صعوبة في فهم هذا الطلب، فاتصل بمكتب DHS الموجود في منطقتك.
يحرم القانون على موظفي DHS إعطاء النصيحة القانونية.

JANE DOE

111 DOE STREET
LANSING, MI 48901

Department of Human Services (DHS) will not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs or disability. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you are invited to make your needs known to a DHS office in your area.

CLIENT REQUESTED HEARING REGARDING ASSISTANCE OR SERVICE ACTIONS:

1. Date DHS Received Hearing Request 10/29/2013		2. Date Client Notified of Department Action 5/26/2010		3. Action Effective Date 5/26/2010	
4. Date of Administrative Review 7/20/2013		5. Actions Prompting Hearing Request <input type="checkbox"/> Termination <input type="checkbox"/> Denied Application <input checked="" type="checkbox"/> CPS Expunction Denial <input type="checkbox"/> Reduction <input type="checkbox"/> Other:			6. Hearing Request Recorded in Bridges <input type="checkbox"/> Yes <input type="checkbox"/> No
7. Benefits Restored? <input type="checkbox"/> Yes <input type="checkbox"/> No		8. Date Claimant Offered Case Conference 11/1/2013 <input checked="" type="checkbox"/> Accepted <input type="checkbox"/> Rejected			9. Date DHS-1560 Sent
10. Amount of Monthly Benefits		11. Benefits Before Negative Action	12. Benefits After Negative Action		13. Employment Related Activities? <input type="checkbox"/> Yes <input type="checkbox"/> No
14. Programs Impacted By the Department Action: <input type="checkbox"/> FIP <input type="checkbox"/> FAP <input type="checkbox"/> MA Eligibility <input type="checkbox"/> SDA Eligibility <input type="checkbox"/> HMP <input type="checkbox"/> CDC <input type="checkbox"/> ADOPTION SUBSIDY <input type="checkbox"/> SER <input type="checkbox"/> PATH <input type="checkbox"/> MA Disability <input type="checkbox"/> SDA Disability <input type="checkbox"/> Other <input checked="" type="checkbox"/> CPS <input type="checkbox"/> EXPEDITED					
15. Case Address 111 Doe Street Lansing MI 48901					

DEPARTMENT REQUESTED HEARING:

<input type="checkbox"/> Intentional Program Violation (IPV)	<input type="checkbox"/> Debt Collection
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Explanation of action taken and facts and fact sources used in taking action:
On 7/17/2013, a written request was received by Ingham County DHS from Ms. Jane Doe requesting expunction from Central Registry for the complaint dated 4/27/2010, with case disposition occurring on 5/26/2010. The case file was reviewed on 7/20/2013. Ms. Doe was informed that after review, it was determined her name would remain on central registry. On 10/29/2013, a DHS 1200 (request for administrative hearing) was received from MS. Jane Doe. Ms. Doe was offered and did attend a Pre-Hearing Conference on 11/1/2013. Ms. Doe indicated a desire to move forward with her request for an administrative hearing as she disagreed with the decision of the Department regarding her continued placement on central registry. The report reviewed (complaint date 4/27/2013) indicated that Ms. Doe's 8 year old daughter had multiple burn marks on her hand, hips, and buttocks. The child indicated to CPS, Law Enforcement, her teacher, and her aunt, that these burns were from her mother burning her with a cigarette. The physician who completed the medical exam of the child indicated that this story is consistent with the burns observed on the child. Additionally, as a result of the physical abuse finding, a petition was filed with the court and out of home placement was authorized by the court for a period of 6 months while Ms. Doe completed services.

Law and regulation(s) or manual item(s) used in taking action:
PSM 711-4, PSM 711-5, PSM 713-9 CPL 722.622 sec. 2(u)(aa)

Prepared by	Date
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Attach a copy of papers to be used at the hearing, INCLUDING MEDICAL INFORMATION where at issue. Submit original Hearing Summary WITHIN 15 DAYS of receipt of the hearing request to: DHS, Administrative Hearings, P.O. Box 30639, Lansing, MI 48909-8139. DISTRIBUTE one copy of this Summary, with all attachments, to claimant/attorney and retain one copy.

**STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
Children's Protective Services**

In the matter of:

Docket #: 14-000000-DHS

Case #: YxxxxxxxxxP

John Doe

_____ /

PROOF OF SERVICE

John Doe
123 Main St.
Lansing, MI 48933

Ingham County Department of Human Services

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
Children's Protective Services

IN THE MATTER OF:

Docket No. XX-002122-DHS

**John Doe
Petitioner**

v

**Agency: Department of
Human Services**

**Ingham County Department
of Human Services,
Respondent**

Case Type: DHS Expunction

Filing Type: Appeal

_____ /

MOTION FOR ADJOURNMENT

NOW COMES Respondent, _____ County Department of Human Services, and moves for the adjournment of the above-captioned hearing scheduled for April 1, 2013. _____ County DHS requests the adjournment of the expunction hearing because of unavailability of key witnesses.

Because the expunction and BCAL licensing hearings are scheduled jointly, and because many of the same witnesses are required for both hearings, Respondent respectfully requesting that the hearings scheduled for April 1, 2013 be adjourned.

Name:
Title:

Date

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
Children's Protective Services

IN THE MATTER OF:

Docket No. XX-002122-DHS

**John Doe
Petitioner**

v

**Agency: Department of
Human Services**

**Wayne County Department
of Human Services,
Respondent**

Case Type: DHS Expunction

Filing Type: Appeal

_____ /

MOTION FOR CHANGE OF HEARING TIME

NOW COMES Respondent, _____ County Department of Human Services, and moves for a change of the start time for the above-captioned hearing. This hearing is currently scheduled for February 10, 2011 at 9:00 a.m. Respondent requests that the time for the above-captioned hearing be changed to 10:00 a.m.

The _____ County Department of Human Services representative will be driving from Lansing. Due to rush-hour traffic and the resulting travel time needed for this representative to reach Detroit for a 9:00 a.m. hearing, Respondent respectfully requests that the start time for the above-captioned hearing be changed to 10:00 a.m. Respondent notes that as it will be calling only one witness, concluding the hearing the same day should not be an issue.

Name:
Title:

Date

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
Children's Protective Services

IN THE MATTER OF:

Docket No. XX-002122-DHS

**John Doe
Petitioner**

v

**Agency: Department of
Human Services**

**Wayne County Department
of Human Services,
Respondent**

Case Type: DHS Expunction

Filing Type: Appeal

_____ /

MOTION TO DISMISS

NOW COMES Respondent, _____ County Department of Human Services, and moves to dismiss the above-captioned hearing currently scheduled for May 8, 2013 at 9:00 a.m.

Through further consideration in the matter _____ County Department of Human Services has agreed to expunge the petitioner from Central Registry. Please find submitted with this motion of copy of the DHS Notice of Expunction.

Name:
Title:

Date

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
Children's Protective Services

IN THE MATTER OF:

Docket No. XX-002122-DHS

**John Doe
Petitioner**

v

**Agency: Department of
Human Services**

**Wayne County Department
of Human Services,
Respondent**

Case Type: DHS Expunction

Filing Type: Appeal

_____ /

MOTION FOR TELEPHONE TESTIMONY

Respondent, _____ County Department of Human Services, moves for the acceptance of telephone testimony in the above-captioned hearing scheduled for August 15, 2012. Respondent will be calling two witnesses to testify in addition to the caseworker: Robin Benson and Rebecca Hay. Because Ms. Benson and Ms. Hay work outside of state government, testifying in an expunction hearing is not an expected work requirement. Further, Ms. Benson and Ms. Hay work in Alpena, MI. Finally, Respondent expects to complete the questioning of Ms. Benson and Ms. Hay in no more than 10 minutes each. It is expected that the caseworker and departmental analyst travel to Detroit for an administrative hearing. However, it would be a hardship to require two non-employee witnesses to travel approximately 490 miles round-trip for such brief testimony. The _____ County Department of Human Services respectfully requests that Ms. Benson and Ms. Hay may give telephone testimony

Name:
Title:

Date

Direct Examination of a Protective Service Worker

- Would you state your name and spell it for the record?
- What is your educational background?
- Where are you employed?
- What is your position?
- Did you participate in abuse and neglect training provided by your agency?
- What course did you attend?
- How long have you been a protective services worker?
- How many protective service complaints have you investigated?
- How many involved _____? (Type of case: Physical, sexual, neglect, etc.)
- Were you assigned to investigate a complaint dated _____?
- Did you interview _____? (Child's name)
- When did you interview _____? (Child's name)
- Where did the interview take place?
- Who was present?
- What time of interview technique did you use?
- Did _____ (child's name) have appropriate developmental and verbal skills?
- What did _____ (child's name) tell you?

-
-
- What did you observe?
 - Where were the injuries (bruises, welts, marks, etc.) ?
 - Were those injuries consistent with what the child told you?
 - Did you take any photographs?
 - Are these the photographs you took?
PROPOSE THE PHOTOGRAPHS AS AN AGENCY EXHIBIT
 - Are you required by agency policy to prepare an investigation report as a normal course of business?
 - Did you prepare an investigation report for this case?
 - Is this a copy of the report you prepared?
PROPOSE THE REPORT AS AN AGENCY EXHIBIT
 - Did your investigation lead you to find by a preponderance of evidence that (abuse or neglect) occurred?
 - What section of the law (statute) and policy did you use in reaching your conclusion?
 - Is this a copy of the law and policy?
PROPOSE LAW & POLICY CITATIONS AS AN AGENCY EXHIBIT
 - What other tools did you use to make your decision? (risk, safety assessments, etc.)
 - Did you complete a Safety Assessment?
 - Is this a copy of the Safety Assessment you completed?
 - What safety concerns did you designate and why?
PROPOSE SAFETY ASSESSMENT AS AN AGENCY EXHIBIT

-
-
- Did you complete a Family Assessment of Needs?
 - Did you use agency policy and definitions to complete the Family Assessment of Needs?
 - Is this a copy of the Family Assessment of Needs you completed?
PROPOSE THE FAMILY ASSESSMENT OF NEEDS AS AN AGENCY EXHIBIT
 - Did you complete a Risk Assessment?
 - Is this the Structured Decision Making tool required by law?
 - Is this a copy of the Risk Assessment you completed?
 - Did you follow agency policy and definitions in the completion of the Risk Assessment?
 - Would you give a brief summary of the purpose of the Risk Assessment?
PROPOSE THE POLICY AND DEFINITIONS AS AN AGENCY EXHIBIT (RISK ASSESSMENT FOR CAT I, II,III) & PROPOSE RISK ASSESSMENT AS AN AGENCY EXHIBIT
 - Would you go over each of the questions and explain why you scored the way you did?
(If an override was used, ask for an explanation)
 - Are you required under agency policy to use the highest score on either the abuse or neglect scale to establish the risk level?
 - What risk level was established?
 - What category was required by agency policy?
 - What section of the law (statute) did you use in the making the determination?
 - Did you place _____(petitioner's name) on Central Registry as a perpetrator of _____(Category level/abuse or neglect type).



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
LANSING

MAURA D. CORRIGAN
DIRECTOR

August 6, 2013

The Honorable Shawn Downey
Michigan Administrative Hearing System
611 W. Ottawa Street, 4th Floor
P.O. Box 30475
Lansing, MI 48909

Dear Judge Downey:

Please find enclosed copy of a memo from the Calhoun County Department of Human Services.

The Calhoun County memo requests a reconsideration of the hearing decision regarding “Jane Doe” v Calhoun County (Docket number XX-XX2197-DHS). Both the Children’s Protective Services Program Office and the Department of Human Services Office of Legal Affairs join in this request for reconsideration of this matter.

Please feel free to contact the CPS Program Office with any questions at 517-388-5125. Thank you in advance for your time and assistance.

Sincerely,

Colin Parks
Manager, Children’s Protective Services

cc: Kathryn Bernhardt, Calhoun County CPS Supervisor
Shaun Culp, Calhoun County Director
James Cochrane, Calhoun County Program Manager
Rebekah Visconti, Office of Legal Affairs Director
Jane Doe, Pretend Address Ave,

Enclosure

235 SOUTH GRAND AVENUE • P.O. BOX 30037 • LANSING, MICHIGAN 48909
www.michigan.gov • (517) 373-2035



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
CALHOUN COUNTY

MAURA D. CORRIGAN
DIRECTOR

August 6, 2013

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

“Jane Doe”

Petitioner

V

Calhoun County

Department of Human

Services

Respondent

Docket No.: XX-XX2197-DHS

Case No.: Y1XXX392P

13XXXXX7

Agency: Department of
Human Services

Case Type: DHS Expunction

Filing Type: Appeal

Hearing Date: July 2, 2013

Administrative Law Judge: Shawn Downey

REQUEST FOR REHEARING/RECONSIDERATION

Pursuant to PSM 717-3, respondent Calhoun County Department of Human Services requests a Rehearing/Reconsideration of the decision issued and mailed July 16, 2013, by Administrative Law Judge Shawn Downey. This request is based upon a misapplication of law or policy and a failure to address relevant issues raised in the hearing request which has resulted in an erroneous Decision and Order. The ALJ's Decision and Order was incorrect for the following reasons:

- a.) That the ALJ misinterpreted/misapplied the policy definitions “child abuse” and “non-accidental”
- b.) That the Risk Assessment was correctly and accurately scored

On November 25, 2011, Children's Protective Services investigated allegations of physical abuse against “Jane Doe”, mother to ZF (DOB 9/25/xx). During the investigation it was discovered that the child ZF was running through the house and the mother told him several times to stop running. When ZF did not stop, the mother became frustrated and threw a metal spoon at him. The metal spoon hit ZF in the back left side of his scalp, causing a 1 inch laceration. Ms. “Doe” “did not seek treatment for the injury. When the child's father picked him up for parenting time,

the father took ZF to the emergency department at Bronson Battle Creek, where the injury was repaired with Dermabond glue.

On December 20, 2011 a Family Risk Assessment of Abuse/Neglect was completed. The risk level for neglect was 5, due to the number of children in the household (four), Ms. "Doe's" inability to control impulses, and a history of domestic violence. The risk level for abuse was 7, due to the youngest child's age (3 years old), the number of children in the home (4) Ms. "Doe's" history of child abuse/neglect as a child, history of domestic violence, and behavioral issues of the child (ZF). The Risk Assessment was reviewed during the case review process and it was determined to have been accurately scored. On January 11, 2012 the investigation was substantiated for physical abuse.

On January 11, 2012 Ms. "Doe's" name was placed on Central Registry due to the substantiated investigation and the risk level being intensive risk of physical abuse in the future. On July 12, 2012 Ms. "Doe" requested that her name be removed from Central Registry. On July 18, 2012 Calhoun County DHS denied Ms. "Doe's" request. On September 17, 2012 Ms. "Doe" requested a hearing before the Administrative Law Judge. On September 25, 2012 a Hearing Summary (DHS-3060) was completed and submitted to MAHS, requesting a hearing. On July 2, 2013, a hearing was held before Shawn Downey, Administrative Law Judge.

During the hearing, DHS presented testimony from XX, the investigative worker. She provided information that Ms. "Doe", in frustration, threw a metal spoon at her child's head. Although Ms. "Doe" stated that she did not intend to hurt her child, the child received a 1 inch laceration on the back of his scalp.

During XX's testimony, the ALJ asked XX if she felt the Risk Assessment was "fair". He asked XX to explain why domestic violence was scored on both the abuse side and the neglect side of the assessment. The ALJ stated that the Risk Assessment was, "a poor example of government work." The Risk Assessment was reviewed during the case review process, and it was determined to have been accurately scored.

In the Decision and Order, the ALJ also stated, "While it is noteworthy that Ms. "Doe" does have a troubling history of domestic violence, it is also noteworthy that there were no previous complaints or referrals involving children and when her children were interviewed, they displayed no fear or concern about the care given to them by their mother." Ms. "Doe" has three misdemeanor convictions of domestic violence; past domestic violence can be an indicator of future threatened harm to her children.

Child abuse is defined as follows in MCL 722.622, Sec. 2, (f):

"Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy."

During Ms. "Doe's" testimony she admitted that she intentionally threw a metal spoon at her son, but did not intend to harm him. It is uncontested that Ms. "Doe" threw a metal spoon at her son out of frustration because he would not stop running in the house. Although she may not have intended to injure the child in the process, she in fact did injure the child.

The hearing decision also states, "...when [her] children were interviewed, they displayed no fear or concern about the care given to them by their mother." There was evidence presented at the hearing by the DHS investigator, XX, which showed the child ZF was fearful of his mother. ZF told the investigator that he was not supposed to talk about what happened because his mother did not want him to tell. ZF further explained that his mother told him that DHS would take him away if he told.

During the course of the CPS investigation, Ms. "Doe" initially denied throwing a spoon at her son ZF. She eventually admitted she had thrown the spoon at him out of frustration. During the hearing on July 2, 2013, she also admitted she had thrown the spoon at her son. Ms. "Doe" did not seek medical treatment for the injury. A short time after the incident, ZF's father picked him up for parenting time, and the child told his father what had happened. ZF was taken to the emergency department at Bronson Battle Creek Hospital by his father, where the laceration was repaired with Dermabond glue.

The ALJ provided an example of a child and parent playing catch with a ball and the child accidentally getting hit with the ball; this comparison is not a sound one to make with this case. The decision to expunge Ms. "Doe" from Central Registry rested on the interpretation of Ms. "Doe" not intending to cause an injury from a conscious decision to throw an object, out of frustration, at her child. This is a misinterpretation of the law; it is the intentional action by Ms. "Doe" and whether that intentional action caused injury/abuse. It is clear that Ms. "Doe" intended to throw a spoon at her child, and as a result, the child was physically injured. Therefore, this evidence with an accurately scored Risk Assessment affirms that Ms. "Doe" should remain on Central Registry.



The Michigan Department of Health and Human Services (MDHHS) does not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, genetic information, sex, sexual orientation, gender identity or expression, political beliefs or disability.