



The Commonwealth of Massachusetts  
 Executive Office of Health & Human Services  
 Department of Developmental Services  
 500 Harrison Avenue  
 Boston, MA 02118

Deval L. Patrick  
 Governor  
 Timothy P. Murray  
 Lieutenant Governor

JudyAnn Bigby, M.D.  
 Secretary

Elin M. Howe  
 Commissioner

Area Code (617) 727-5608  
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2010

MA

Re: Appeal of - Final Decision

Dear :

Enclosed please find the recommended decision of the hearing officer in the above appeal. A fair hearing was held on the appeal of your eligibility determination.

The hearing officer made findings of fact, proposed conclusions of law and a recommended decision. After reviewing the hearing officer's recommended decision, I find that it is in accordance with the law and with DDS regulations. Your appeal is therefore DENIED.

You, or any person aggrieved by this decision may appeal to the Superior Court in accordance with Massachusetts General Laws, Chapter 30A. The regulations governing the appeal process are 115 CMR 6.30-6.34 and 801 CMR 1.01-1.04.

Sincerely,

*Elin M. Howe*  
 Elin M. Howe  
 Commissioner

EMH/ecw

cc: Sara Mackiernan, Hearing Officer  
 Richard O'Meara, Regional Director  
 Marianne Meacham, General Counsel  
 James Bergeron, Assistant General Counsel  
 Elizabeth Moran Liuzzo, Regional Eligibility Manager  
 Frederick Johnson, Psychologist  
 File

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF DEVELOPMENTAL SERVICES

In Re: Appeal of [REDACTED]

This decision is issued pursuant to the regulations of the DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS)(115 CMR 6.30 – 6.34) and M.G.L. Chapter 30A. A hearing was held on [REDACTED] 2010 at the Department's [REDACTED] in [REDACTED], Massachusetts.

Those present for all or part of the proceedings were:

[REDACTED] LCSW	[REDACTED]'s Individual Therapist
[REDACTED]	[REDACTED]'s father
[REDACTED]	[REDACTED]'s mother
Frederick Johnson, Psy.D.	DDS Psychologist
James Bergeron, Esq.	Attorney for DDS

[REDACTED] was not present at the Hearing by agreement of the parties.

The evidence consists of documents submitted by the Appellant numbered A 1 - 8, documents submitted by the Department of Developmental Services numbered D 1 - 18, and approximately two and a half hours of oral testimony.

APPELLANT'S EXHIBITS

DOCUMENT	DATE	AUTHOR
A - 1 Appeal Statement	[REDACTED] 10	Mr. and Mrs. [REDACTED]
A - 2 Oral testimony of [REDACTED], LCSW	[REDACTED] 10	
A - 3 Individualized Educational Plan	[REDACTED] 09	[REDACTED] Public Schools
A - 4 Occupational Therapy Evaluation	[REDACTED] 00	[REDACTED], MS, OTRL
A - 5 Occupational Therapy Evaluation	[REDACTED] 98	[REDACTED], MS, OTRL
A - 6 Motor Assessment	[REDACTED] 94	[REDACTED], MS, OTRL
A - 7 Speech and Language Evaluation	[REDACTED] 00	[REDACTED], MS, CCC-SLP
A - 8 [REDACTED]'s Notes	[REDACTED] 10	

Exhibit A - 8 was included by Appellant and numbered by me for identification

DEPARTMENT OF DEVELOPMENTAL SERVICES EXHIBITS

DOCUMENT	DATE	AUTHOR
D - 1 Vita Frederick Johnson, Psy. D.		
D - 2 115 CMR 6.04 General Eligibility (excerpts)		
D - 3 115 CMR 2.01 Definitions (excerpts)		
D - 4 DDS Application for Eligibility	[REDACTED] 08	
D - 5 DDS Eligibility Report	[REDACTED] 08	F. Johnson, Psy.D.
D - 6 DDS Eligibility Determination Letter	[REDACTED] 08	
D - 7 Appeal of Eligibility Determination	[REDACTED] 08	[REDACTED]
D - 8 DDS Informal Conference Attendance Sheet	[REDACTED] /08	
D - 9 Informal Conference Results and Eligibility Determination Letter	[REDACTED] 08	

- D – 10 Appeal and Request for Fair Hearing [REDACTED] 08
- D – 11 DDS Notice of Receipt of Fair Hearing Request [REDACTED] 08
- D – 12 DDS Notice of Fair Hearing [REDACTED] 10
- D – 13 Psychological Evaluation [REDACTED] 1994 [REDACTED], Licensed Psychologist
- D – 14 Neuropsychological Evaluation Report [REDACTED] 2000 M. [REDACTED], Ph.D.
- D – 15 Woodcock Johnson Test of Cognitive Abilities and Achievement Summary and Score Report [REDACTED] 04 [REDACTED], M.ED.; C.A.G.S.
- D – 16 Psychological Evaluation Report [REDACTED] 04 [REDACTED], M.ED.; C.A.G.S.
- D – 17 Psychological Evaluation Report [REDACTED] 07 [REDACTED], M.ED.; C.A.G.S.
- D – 18 Vineland Adaptive Behavior Scales [REDACTED] 08

**ISSUE PRESENTED**

Whether the applicant meets the eligibility criteria for DDS supports by reason of mental retardation as set out in 115 CMR 6.04(1).

**SUMMARY OF THE EVIDENCE PRESENTED**

[REDACTED] is a twenty-one year old young woman who has been attending the [REDACTED] School in [REDACTED] as a day student since [REDACTED] 2005. [REDACTED]'s need for special services was evident prior to her attending school. She was evaluated by a psychiatrist at the age of twelve months due to excessively aggressive behavior. She exhibited sensory defensiveness and sensitivity at an early age. (Ex. A – 4) [REDACTED] has had a number of school placements. She attended kindergarten at [REDACTED] School; [REDACTED] School in [REDACTED] from the beginning of first grade to the first half of third grade; [REDACTED] School from the second half of third grade to the first month of fourth grade [REDACTED] School from [REDACTED] 1997 to [REDACTED] 1998; [REDACTED] from the second month of fourth grade until [REDACTED] 1999; [REDACTED] at [REDACTED] Hospital from [REDACTED] 1999 to [REDACTED] of 2002. From [REDACTED] 2002 until [REDACTED] 2005 [REDACTED] was home tutored. In [REDACTED] 2005 she entered the [REDACTED] School. (Ex. DDS – 16, A – 4)

[REDACTED] has been diagnosed with Asperger's Syndrome, Bipolar Disorder and Anxiety. She has been treated with medications for these disorders. She has also demonstrated sensory sensitivity, attentional difficulties and angry and sometimes aggressive behavior, especially when frustrated. She has received psychotherapy, occupational therapy, speech and language therapy and special educational services throughout her school career.

[REDACTED] has been evaluated a number of times in order to determine her cognitive functioning and to find the best school placement to address her needs. The record contains four sets of scores on standardized tests. They are:

DATE	TEST	SCORES
[REDACTED] 1994 (Ex. DDS 13)	Weschler Pre-school and Primary Scales of Intelligence Revised	Full Scale IQ 89 Verbal IQ 100 Performance IQ 79
[REDACTED] 1999 (Ex. DDS 14)	Weschler Intelligence Scale For Children	Full Scale IQ 80 Verbal IQ 89

## Performance IQ 74

██████████ 2004  
(Ex. DDS 16)

Weschler Intelligence Scale  
For Children – Fourth Edition

Full Scale IQ 77  
Verbal Comprehension Index 96  
Perceptual Reasoning Index 82  
Working Memory Index 86  
Processing Speed Index 62

██████████ 2007  
(Ex. DDS 17)

Weschler Adult Intelligence  
Third Intelligence

Full Scale IQ 84  
Verbal Comprehension Index 109  
Perceptual Organization Index 76  
Working Memory Index 80  
Processing Speed Index 81

Each professional who evaluated ██████████ stated that the scores should be considered with caution due to the statistically significant difference in her performance and verbal scores. Although she has acquired information, she has difficulty processing information and using the information constructively.

██████████ was evaluated by an Occupational Therapist on ██████████ 1994 when she was five years ██████████ of age. She was diagnosed with Pervasive Developmental Disorder, Obsessive Compulsive Disorder and Attention Deficit Hyperactivity Disorder. ██████████ exhibited distractibility, difficulty with visual discrimination and visually attending to task. She also had difficulty processing light tactile input and demonstrated poor postural tone. The evaluator noted ██████████'s distractibility, impulsivity and resistance to testing tasks. She felt that if able to participate in the testing more fully, ██████████ would have obtained higher scores. (Ex. A – 6)

On ██████████ 1998 ██████████ participated in a three and one half hour Occupational Therapy Evaluation. (Ex. A – 5) ██████████ exhibited extreme distractibility to visual input. At times ██████████ avoids eye contact in order to decrease visual input. She continued to exhibit tactile defensiveness and to be easily upset by loud noises.

██████████ had another Occupational Therapy Evaluation on ██████████ and ██████████ 2000. She again exhibited extreme distractibility and sensory defensiveness. ██████████'s behavior varied during the evaluation. Her sensory defensiveness and visual perceptual problems were evident. (Ex. A- 4)

██████████ participated in Speech and Language Evaluation between ██████████ and ██████████ 2000. The evaluation was supposed to be conducted during sessions of thirty minutes two times per week. Due to ██████████'s absences from school and her difficulty adjusting to school many days, the evaluation period did not start until ██████████. ██████████ was distracted, fidgety, tearful and resistant to testing. ██████████ had difficulty in all areas tested. The tester concluded that her deficits in pragmatic language use negatively affects her comprehension of language as well as verbal expression. (Ex. A – 7)

## ANALYSIS

In order to be eligible for DDS supports, an individual who is eighteen (18) years of age or older must meet the three criteria set forth at 115 CMR 6.04. The person must be (a) domiciled in the Commonwealth, (b) a person with mental retardation as defined in 115 CMR 2.01<sup>1</sup>, and (c) in need of specialized supports in three or more of the following seven adaptive skill areas: communication, self – care, home living, community use, health and safety, functional academics and work.

Mental Retardation means significantly sub-average intellectual functioning existing concurrently and related to significant limitations in adaptive functioning. Mental retardation manifests before age 18. A person with mental retardation may be considered to be mentally ill as defined in 104 CMR (Department of Mental Health), provided that no person with mental retardation shall be considered to be mentally ill solely by reason of his or her mental retardation.

Significant Limitations in Adaptive Functioning means an overall composite adaptive functioning limitation that is two standard deviations below the mean or adaptive functioning limitations in two out of three domains at 1.5 standard deviations below the mean of the appropriate norming sample determined from the findings of assessment using a comprehensive, standardized measure of adaptive behavior, interpreted by a qualified practitioner. The domains of adaptive functioning that are assessed shall be:

- (a) areas of independent living/practical skills;
- (b) cognitive, communication, and academic/conceptual skills; and
- (c) social competence/social skills.

Significantly Sub-average Intellectual Functioning means an intelligence test score that is indicated by a score of 70 or below as determined from the findings of assessment using valid and comprehensive, individual measures of intelligence that are administered in standardized formats and interpreted by qualified practitioners.

The evidence includes four evaluations in which [REDACTED] was given full scale IQ scores. Her scores were 89, 80, 77 and 84. Each evaluator cautioned that the scores should be considered low estimates of [REDACTED]'s abilities.

The appellant argues that despite the full scale IQ scores which are beyond that range considered to be evidence of mental retardation, her significant adaptive difficulties when considered with the IQ scores make her eligible for services from the Department of Developmental Disabilities. [REDACTED] struggles with severe difficulties in adaptive behaviors across all domains of daily life. Her difficulties are not related to mental retardation.

## FINDINGS AND CONCLUSIONS

1. I find that [REDACTED] is over eighteen years of age.
2. I find that [REDACTED] is domiciled in the Commonwealth of Massachusetts.
3. I find that [REDACTED] has serious and significant limitations in adaptive functioning.
4. I find that [REDACTED] cannot safely complete activities of daily living or function without constant supervision and support.
5. I find that despite her difficulties, [REDACTED] does not have significantly sub – average intellectual functioning and has never had a intelligence test score below seventy.

- 6. I find that [REDACTED]'s limitations in adaptive functioning are not related to mental retardation.
- 7. I find that [REDACTED] is not a person with mental retardation.

After a careful review of all the evidence presented, I find that [REDACTED] has not shown by the preponderance of the evidence that she is eligible for Adult Supports from the Department of Developmental Disabilities.

The determination that [REDACTED] does not meet the criteria set out in 115 CMR 6.04 is correct and should be upheld.

**APPEAL**

Any person aggrieved by a final decision of the Department may appeal to the Superior Court in accordance with M.G.L. c30A (115 CMR 6.34[5]).

Date: \_\_\_\_\_

\_\_\_\_\_  
Sara Mackiernan  
Hearing Officer