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Executive Office of Health & Human Services
Department of Mental Retardation
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Elin M. Howe
Commissioner

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December 19, 2007

Re: Appeal of [REDACTED] Final Decision

Dear [REDACTED]

Enclosed please find the recommended decision of the hearing officer in the above appeal. She held a fair hearing on the appeal of your client's eligibility determination.

The hearing officer's recommended decision 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 DMR regulations and therefore adopt its findings of fact, conclusions of law and reasoning as my own. 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
Commissioner

EMH/ecw

cc: Deirdre Rosenberg, Hearing Officer
Terry O'Hare, Regional Director
Marianne Meacham, General Counsel
John C. Geenty, Assistant General Counsel
Richard Costigan, Psychologist
File

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of [REDACTED]

This decision is issued pursuant to the regulations of the Department of Mental Retardation (DMR) (115CMR 6.30 – 6.34) and M.G.L. c. 30A. A fair hearing was held on May 14, 2007 at the Department of Mental Retardation's Worcester Area Office. Those present were:

[REDACTED]	Appellant
[REDACTED]	Appellant's Cousin
[REDACTED]	Appellant's Cousin
Richard P. Costigan, Psy.D.	DMR Psychologist
John C. Geenty, Jr.	DMR Counsel

The evidence consists of the following exhibits and approximately one and one quarter hours of oral testimony:

1. Adaptive Behavior Assessment System (ABAS-II), 12/13/05
2. Adaptive Behavior Assessment System (ABAS-II), 4/12/06
3. Eligibility Report of Dr. Richard Costigan, 1/5/06
4. Eligibility Report of Dr. Richard Costigan, 5/30/06
5. Further Eligibility Report of Dr. Richard Costigan, 5/14/07
6. Photograph's of Appellant's Apartment
7. Worcester Fire Department Report

Cognitive Evaluation of Sister Mary Clarinda, 4/13/67

ISSUE

Whether the Appellant meets the eligibility for DMR services by reason of mental retardation as defined in 115 CMR 6.03(1).

BACKGROUND

The Appellant, [REDACTED] is a 54 year old woman who lives in Worcester, Massachusetts, in an apartment she shares with another disabled woman. [REDACTED]

grew up in Randolph, Massachusetts, in the home of her maternal grandparents. Her mother, who also had cognitive disabilities, was part of this household. At some point she was put into foster care, but returned to her grandparents' home when she was approximately ten or eleven years old. She was enrolled at St. Colletta's School in Braintree, Massachusetts, in September, 1965 when she was thirteen years old, and was terminated in September, 1968 as a result of "bizarre behavior and frequent episodes of stealing." She then entered a residential program at the Rutland Rehabilitation Center, in Rutland, Massachusetts, where she worked in the kitchen. Following this she obtained a job at a nursing home working as a candy stripper. After two or three years at the nursing home she moved to Worcester to the home of a fellow student from the Rutland Rehabilitation Center. It is unclear how long she remained with this family. She apparently had a long term job as a machine operator which ended when she was injured at work. She has not been regularly employed since that time.

SUMMARY OF THE EVIDENCE

There is only one cognitive evaluation of [redacted] in the record. This assessment was done by Sister Mary Clarinda, O.S.F., in 1967, when the Appellant was a student at St. Colletta's School (Exhibit #9). At that time she was tested using the Stanford-Binet Intelligence Scale. Sister Clarinda reported [redacted] full scale as 57. According to Sister Clarinda's report, [redacted] esting behaviors were very positive ("initiates activity," "quick to respond," "persistent," "eager to continue," "needs minimum of commendation" were all checked off in the Stanford-Binet record booklet), so the results can be assumed to be an accurate picture of her intelligence at that time (bearing in mind that [redacted] grew up at a time when Chapter 766 Special Education services did not exist). Therefore, I find that [redacted] IQ meets the DMR standard for establishing mental retardation in effect at the time she applied for services, that is, "an IQ of approximately 70 to 75 or below."¹

However, an applicant for DMR services must also establish that she is 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. The record contains two evaluations of [redacted] living skills as measured by the Adaptive Behavior Assessment System, Second Edition (ABAS-II). The first ABAS was administered by a Ms. Kulza on December 13, 2005 (Exhibit #1). The Appellant provided the information on which her scores were based. Her General Adaptive Composite of 84 placed [redacted] verall adaptive functioning in the below average range (Exhibit #5, Eligibility Hearing Report). However, she did not receive any subtest scores of three or below. According to the Department's regulations, an applicant for DMR Adult Services must have subtest scores of three or below in three of the above listed adaptive functioning areas.

¹ Effective June 2, 2006, DMR changed its definition of mental retardation to "significant sub-average intellectual function" as defined by "intelligence indicated by a score of 70 or below..." See 115 CMR 2.00. Ms. [redacted] filed his appeal before the new definition was adopted. Even if she had not, her IQ score of 57 meets the new, lower standard.

The ABAS II was readministered on April 12, 2007 by Dr. Richard Costigan, who is DMR's Eligibility Psychologist for the Worcester Region (Exhibit #2). At [redacted] family's request, an observer was present at this session. According to Dr. Costigan, there was no input from this person. Again, [redacted] was the source of the information used to ascertain her adaptive skill levels. She received the following subtest scores:

Communication	8
Community Use	8
Functional Academics	2
Home Living	7
Self Care	5
Work	Not administered

As can be seen, the Appellant scored above three on all subtest scores.

[redacted] aunt and her daughter attended the Fair Hearing and testified that [redacted] test responses were not accurate: that is, they believe that she overstated her abilities. Having met with [redacted] listened to her relatives' testimony, and examined the photographic evidence they provided, I agree that the two ABAS tests do overstate her adaptive skill levels in some respects. Therefore, using the information that [redacted] relatives provided, and my own observations of the Appellant, I recalculated the second ABAS. This resulted in a further lowering of her scores, especially in the categories of self care and home living. However, even this recalculation did not lower her scores enough to meet the Department's standards regarding adaptive living skills.

FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, and despite [redacted] obvious need for services, I find that she has failed to show by a preponderance of the evidence that she meets the DMR eligibility criteria. My specific reasons are as follows:

In order to be eligible for DMR supports, an individual who is 18 years of age or older must meet the three criteria set forth at 115 CMR 6.03:

- a) she must be domiciled in the Commonwealth,
- b) she must be a person with Mental Retardation as defined in 115 CMR 2.01, and
- c) she must be 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.

By statute, M.G.L. c. 123B, section 1, a mentally retarded person "is a person who, as a result of inadequately developed or impaired intelligence, as determined by clinical authorities as described in the regulations of the department, is substantially limited in his ability to learn or adapt, as judged by established standards available for the evaluation of a person's ability to function in the community."

Consistent with its statutory mandate, DMR had adopted the American Association on Mental Retardation (AAMR) standards as the clinical authority to which it referred in determining whether an individual has "inadequately developed or impaired intelligence," and the AAMR standard was in effect when [redacted] applied for DMR services. The AAMR standards establish a three-prong test: (a) the individual must have significantly sub average intellectual functioning defined as an IQ score of approximately 70 to 75 or below, based on assessments that include one or more individually administered general intelligence tests, (b) related limitations in two or more of the following adaptive skill areas: communication, self care, home living, social skills, community use, self direction, health and safety, functional academics, leisure and work must exist concurrently with sub average intellectual functioning, and the individual must have manifested criteria (a) and (b) before the age of 18.

There is no dispute that the Appellant meets the first criterion and I specifically find that she meets that criterion. In addition, I find that her IQ of 57 meets the standard of mental retardation as that term was defined when she applied for Department of Mental Retardation services. However, for the reasons previously discussed, her adaptive skill levels do not meet the Department's standards. Regretfully, then, I concur with the Department of Mental Retardation that the Appellant is not eligible for its services.

APPEAL

Any person aggrieved by a final decision of the Department may appeal to the Superior Court in accordance with M.G.L.c.30A [115 CMR 6.34(5)].

Date: December 18, 2007

Deirdre Rosenberg
Deirdre Rosenberg
Hearing Officer