

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

Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

JudyAnn Bigby, M.D.
Secretary

Elin M. Howe
Commissioner

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October 12, 2007

Re: Appeal of [REDACTED] - Final Decision

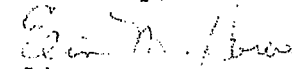
Dear [REDACTED]

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 G.L. c. 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
Gail Gillespie, Regional Director
Marianne Meacham, General Counsel
Ellen Kilicarslan, Regional Eligibility Manager
John O. Mitchell, Assistant General Counsel
Randine Parry, Psychologist
Victor Hernandez, Field Operations Senior Project Manager
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 or the Department)(115 CMR 6.30-6.34) and M.G.L. c. 30A. A fair hearing was held on March 21, 2007 at the Department of Mental Retardation's central office located at 500 Harrison Avenue, Boston, Massachusetts. Those present were:

[REDACTED]
Mary E. Barry
Gail Gillespie
Gail Geromini

John O. Mitchell, Esq.

Appellant's Sister
Appellant's Mother
Area Director
Regional Director, Metro Region
Service Coordinator, Newton South
Norfolk Area Office
Assistant General Counsel, DMR

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

1. 115 CMR sec.6.33 *et seq.*
2. G.L. c. 30A, sec. 14
3. Appellant's Residential Planning Form, 5/9/06
4. Boulet Settlement Agreement
5. Progress Note of Gail Geromini, SC
6. Letter of Mary Barry, 8/23/02
7. Letter of Mary Barry, 3/27/01
8. Letter of Mary Barry, 8/25/03
9. Letter of Mary Barry, 8/26/04
10. Letter of Mary Barry, 4/1/05
11. Letter of Mary Barry, 10/2/06
12. Letter of Gail Gillespie, 11/21/06

13. Boulet Refusal of Residential Services
14. Letter of Mary Barry, 5/9/06
15. Letter of [REDACTED] and Notice of Appeal Rights ,6/7/06
16. Letter of Neil V. McKittrick, 6/21/06
17. Individual Support Plan, 8/30/06

BACKGROUND

[REDACTED] is a 44 year old woman who resides with her mother in Dedham, Massachusetts. She is eligible for Department of Mental Retardation Services as an adult, and is currently receiving certain home care services from DMR. In addition, she was a plaintiff in Edmund Boulet, et al. v. Argeo Paul Cellucci, Civil Action No. 99-CV-10617-DPW (Exhibit #4), a class action lawsuit brought on behalf of individuals with mental retardation or developmental disabilities who were on a DMR waiting list for residential placement on July 14, 2000. The parties entered into a settlement agreement on December 19, 2000. Under the terms of the agreement, the Department agreed to "provide, purchase, or arrange for 1,250 new state-funded out-of-home placements" for the Boulet plaintiffs (Exhibit #4, Settlement Agreement, Section C). The Settlement Agreement further provides that the Department must fund interim services for the plaintiffs while they await residential placement. Apparently, DMR also agreed to offer certain services to a discrete number of Boulet plaintiffs under a pilot program it conducted for a one year period which was called the In-Home Family Partnership (Exhibit #12, Boulet Residential Planning—Informal Conference Result, 11/21/06). While there is no dispute that the Department once offered such a program, there is no reference to the In-Home Family Partnership in the Settlement Agreement, and it was not part of the Boulet Agreement. The Settlement Agreement expired on June 30, 2006 (Exhibit #4, Section C).

[REDACTED] who is [REDACTED] mother and legal guardian, has not, and does not presently want a residential placement for her daughter (despite being on the residential placement list described above). Her daughter currently lives with her, as she always has. [REDACTED] and her daughter want this arrangement to continue for as long as possible. Because [REDACTED] did not accept a residential placement for her daughter, DMR sent her a Notice of Appeal Rights in June, 2006. The Notice stated as follows:

In accordance with the Settlement Agreement approved by the court in the lawsuit known as Boulet v. Cellucci, the...staff has worked with you to complete a Residential Planning Form and you have declined the Department's offered placement, or you have declined to participate in the Residential Planning Form process. You have a right to appeal the

DMR determination of need in the Residential Planning form processes described in the Boulet Settlement Agreement. (Exhibit #15, Notice of Appeal Rights).

The Notice also described [redacted] appeal rights. [redacted] signed and returned the notice in a timely fashion. In a cover letter dated June 7, 2006 and directed to Mary Barry, she stated that she did not agree to discharge the Department from its obligations under the settlement agreement (Exhibit #15, [redacted] letter of 6/7/06).

As a result, a fair hearing was held on March 21, 2007, at DMR's central office located at 500 Harrison Avenue, Boston, Massachusetts. At the hearing, [redacted] who is the Appellant's sister, spoke on behalf of her mother and sister. It is [redacted] and [redacted] position that as a Boulet plaintiff, [redacted] is entitled to receive any services she may need now or in the future in her own home, apartment, or home of any relative who may have assumed responsibility for her care. In addition, or in the alternative, [redacted] and [redacted] ask that funds be set aside for the Appellant's future needs. I do not read the Settlement Agreement as providing any such entitlement. In essence, the Appellant is asking DMR to expand her rights under the Agreement, and to extend the Agreement's court-ordered expiration date. The Department does not have the authority to do this.

Notwithstanding the foregoing, and insofar as the issues raised by the Appellant are appropriately appealable under 115 CMR 6.30-6.34, I further find that the Department has met its obligations to the Appellant under the Boulet Settlement Agreement.

The Settlement Agreement in Civil Action No. 99-CV-10617-DPW provides, in pertinent part, that

For the period beginning with the Commonwealth's Fiscal Year 2002 and ending Fiscal Year 2006 (July 1, 2001 through June 30, 2006), the Defendants agree to request additional appropriations for the Department of Mental Retardation (DMR) in a total amount of \$85 million....

....to provide, purchase, or arrange for 1,250 new state-funded-out-of-home placements and for Interim Services pursuant to the schedule set forth in Attachment A to this Agreement...(Exhibit #4, Sections [1] and [3].

As the record before me makes clear, DMR has offered the Appellant, [redacted] the services referenced above within the period set forth in the Settlement Agreement. The record further makes clear that the Appellant's guardian has declined those services (Exhibits #13, 14, and 15), and filed a Notice of Appeal (Exhibit #15). That Appeal having been heard by me, and for the reasons set forth, it is hereby DENIED.

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: Oct. 5, 2007

Deirdre Rosenberg
Deirdre Rosenberg
Hearing Officer