

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of (

This decision is issued pursuant to the regulations of the Department of Mental Retardation (DMR or the Department), 115CMR 6.30 – 6.34, and M.G.L. c. 30A. A fair hearing was held on August 11, 2005 at the Fernald Development Center in Waltham, Massachusetts. Those present were:

Elaine Cockroft, Esq.
Allegra E. Munson, Esq.
Fred Johnson, Ph.D.

Appellant
Appellant's Mother
Appellant's Father
Attorney for Appellant
Attorney for DMR
DMR Psychologist

The evidence consists of nine exhibits submitted by DMR, two exhibits submitted by the Appellant, and approximately forty-five minutes of oral testimony. Appellant's two exhibits are included among the Department's submission, and I have noted in the list below which these are.

Exhibit D1	5/16-22/94	Neuropsychology Evaluation
Exhibit D2	5/17/94	Pediatric Neurology Evaluation
Exhibit D3	4/28/95	Social Worker Evaluation
Exhibit D4	2/14/02 (Exhibit D4 is the same as Appellant's Exhibit 1)	Psychoeducational Evaluation
Exhibit D5	4/30/03	Clinical Team Report
Exhibit D6	6/6-9/03	Educational Evaluation
Exhibit D7	9/25/03	ABAS Evaluation
Exhibit D8	2/5/04 (Exhibit D8 is the same as Appellant's Exhibit 2)	Psychoeducational Assessment
Exhibit D9	6/7/04	DMR Eligibility Report

ISSUE

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

BACKGROUND

Ms. C is a 20 year-old woman who is a residential student at [redacted] in [redacted] Massachusetts. She currently lives with three other female students and one staff member. Prior to attending [redacted] the Appellant attended the [redacted] Massachusetts, public schools, and lived with her parents, J [redacted] and M [redacted] C [redacted] at [redacted] Massachusetts. Her parents withdrew her from [redacted] High School after she was sexually abused by a fellow student.

Ms. C [redacted] has received her educational services, including her residential placement at [redacted] pursuant to Chapter 766, the Massachusetts Students with Disabilities Act. Under Chapter 766, a child who is deemed to have special needs is entitled to receive educational services that meet the individual's needs resulting from his or her disability. Chapter 766 does not provide any services after a special needs student turns 22 years of age.

The Appellant applied for DMR supports on or about September 25, 2003. DMR denied her application on the ground that she did not meet its definition of mental retardation, as set forth at 115 CMR 2.01. Ms. C [redacted] appealed that decision on or about August 12, 2004, and requested a Fair Hearing. The hearing was held on August 11, 2005, pursuant to M.G.L. c. 30a and DMR regulations at 115 CMR 633(2), and under the Massachusetts Code of Adjudicatory Procedure, 801 CMR 1.02.

SUMMARY OF THE EVIDENCE

The Department's first exhibit is a Neuropsychology Evaluation conducted at Braintree Hospital by Carol A. Leavell, Ph.D., Senior Clinical Neuropsychologist, when the Appellant was nine years old. (D1) Doctor Leavell states that the Appellant had been previously diagnosed with attention deficit hyperactivity disorder, although she prefers to describe G [redacted] as having a "profound language-based learning disability."

This report, which is very extensive, reviews two prior evaluations when Ms. C [redacted] was seven and eight years old, respectively. On both those occasions she was administered the WISC-III intelligence test. In 1992, when she was seven years old, she received a verbal score of 72, a performance score of 82, and a full scale IQ of 75. In 1993, she received a verbal score of 75, a performance score of 93, and a full scale IQ of 82.

Although the report is thorough and well-written, Dr. Leavell does not mention where or by whom the 1992 and 1993 tests were administered. Nevertheless, there is nothing in her report to suggest that she does not consider the results reliable indicators of C's cognitive abilities. Dr. Leavell states that she readministered selected subtests of the WISC-III, but she did not give overall IQ numbers in her report. On one of the readministered subtests (Block Design), G performed "within normal limits, with a scaled score of 10," as compared to "a scaled score of 6 and 7 respectively in the 1992 and 1993 evaluations." (Exhibit D1) Since she did not question the results of the 1992 and 1993 IQ scores, one can assume, and I have, that the other subtest results were consistent with the results of the 1992 and 1993 IQ tests.

In addition to the WISC-III subtests, Dr. Leavell also administered various educational tests, including the Syntactic Comprehension test, the Boston Naming Test, the Kaufmann Assessment Battery for Children, the California Verbal Learning Test, and the Woodcock-Johnson Psychoeducational Battery. She did not explain how these tests reflect on cognitive ability, and so I did not give much weight to them in reaching my decision in this case. That being said, G's academic skills were found to be in the late second to early third grade level, measured on the Woodcock-Johnson Psychoeducational Battery. Dr. Leavell stated that throughout the evaluation G demonstrated "very positive test-taking behaviors....[and therefore the] results [are] considered a valid indication of her cognitive functioning." She also noted that the Appellant enjoyed school and academic work, an observation repeated by other evaluators. (See, for example, Exhibit D4.)

The next exhibit relevant to Ms. C's cognitive abilities is Exhibit D4, which is also Appellant's Exhibit 1. This is a Psychoeducational Evaluation conducted by the Public Schools in 2002 in connection with preparing a Chapter 766 educational plan for Ms. C for the following academic year. The examiner was Sara M. Deveney, Certified School Psychologist, M.Ed., CAGS. The Appellant was sixteen years old at the time of this test, and apparently had not been given an IQ test since 1993, when she was eight years old. Her results were as follows:

Verbal IQ	69
Performance IQ	78
Full Scale IQ	71

As can be seen, G's full scale IQ at this juncture was lower than when she was tested at seven and eight years of age (71 versus 75 and 82, respectively). In her report, Mrs. Deveney does not compare G's performance at the age of sixteen with her earlier scores, and nothing in the report suggests a reason for her lower scores at this time.

In 2003 the Appellant was tested by [redacted] School Psychologist at [redacted] (Exhibit D6). G [redacted] was 18 years old when she took these tests. The tests administered as part of this educational evaluation were achievement tests, e.g., Wechsler Individual Achievement Test, Peabody Individual Achievement Test and Key Math Diagnostic Arithmetic Test, among others. The results of all the tests were expressed in terms of grade levels, and their relationship to IQ or cognitive ability was not explained. Therefore, I was unable to use this report in reaching my decision regarding her eligibility for DMR services.

The Appellant was also evaluated in 2004 Vanessa Wade, M.A., CAGS, Licensed School Psychologist, [redacted] Public Schools. (Exhibit D8, Psychoeducational Assessment, Appellant's Exhibit 2). DMR requested this evaluation in response to the Appellant's eligibility application. G [redacted] who was nineteen years old at the time of the test, was administered the WAIS-III. The WAIS-III is an individually administered intelligence test given to people 16 years of age and above. G [redacted] received the following scores:

Verbal IQ	74
Performance IQ	74
Full Scale IQ	72

Like the results of Ms. Coveney's 2002 WISC-III tests, her scores here were lower than what she achieved when she was seven and eight years old. However, in accordance with DMR regulations, mental retardation must be established before an individual reaches eighteen years of age. (115 CMR 02.01) Since G [redacted] was beyond the determination age at the date of this test, these results did not play an important role in making my decision.

In her report, Ms. Wade states that G [redacted] enjoys playing basketball, soccer, and volleyball. She also reported that G [redacted] told her she enjoyed her culinary class at [redacted] and volunteering at a local day care center. The Appellant told Ms. Wade that she would like to work as an assistant teacher in a daycare facility after she completes her schooling. She hopes to live in an apartment with a few of her peers.

K [redacted] C [redacted] G [redacted] s adoptive mother, testified about her daughter's behavior and her concerns regarding the Appellant's ability to function independently. She stated that G [redacted] sometimes acts out when she becomes angry or frustrated. This may involve throwing things, going to her room, or, on rare occasion, cutting herself. Her mother used the word "scraping." She testified that her daughter has never had to be hospitalized for self-injurious behavior. Earlier evaluations (see, e.g. Exhibit D1) also refer to similar behavioral issues.

K [redacted] C [redacted] also testified that when G [redacted] is home from school, she does not feel comfortable leaving her by herself, and so will not leave her unattended. In

addition, she testified that G [redacted] is very apprehensive about undertaking certain independent activities. For instance, Mrs. C [redacted] stated that she has tried to train G [redacted] to take public transportation, but that G [redacted] is "petrified" about doing this.

In her own testimony, G [redacted] confirmed that she is reluctant to do things on her own, although I had the strong impression that she underestimated her abilities. On the other hand, she spoke very positively about her work experiences at [redacted]. She continues to participate in athletic activities.

I found the Appellant to be a poised, well-spoken young woman who answered all questions put to her appropriately. It was obvious to me that she has been well cared for by her parents, and that she has many strengths that should stand her in good stead in the future.

FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, and despite Ms. C [redacted]'s need for some type of continuing support, I find that the Appellant 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,
- h) she must be a person with Mental Retardation as defined in 115 CMR 2.01, and
- i) 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.

There is no dispute that the Appellant meets the first criterion and I specifically find that she meets that criterion. However, I find that she is not mentally retarded as that term is defined at 115 CMR 2.01.

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 has adopted the American Association on Mental Retardation (AAMR) standards as the clinical authority to which it refers in determining whether an individual has "inadequately developed or impaired intelligence." 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.

Applying those standards, I find that Ms. C does not have significantly sub-average intellectual function. I have based my decision in large part on her 1992 and 1993 IQ tests, when she attained full scale IQ scores of 75 and 82, respectively. Although the actual tests were not included in the record, it was quite apparent, in the Neurological-Psychology Evaluation (Exhibit D1), that those scores were thoroughly vetted by Dr. Leavall in the course of her evaluation of the Appellant in 1994. Hence, I found these earliest test scores to have the highest degree of reliability. The score of 75 is at the outer edge of the Department's definition of mental retardation (see above) and the 82 she achieved when she was eight years old is well beyond the 70-75 range. I was also struck by the references to her enjoyment of academic work and her ability to apply herself to the tests administered to her during the various evaluations. I did not give much weight to the only other intelligence test administered to her before she was 18 years old (Exhibit D4) and no weight to the evaluation of 2004, when she was 19 years old. Therefore, I find that the Appellant is not "mentally retarded" as that term is used in statute and regulation for the determination of eligibility for DMR supports.

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: October 22, 2005

Deirdre Rosenberg
Deirdre Rosenberg
Hearing Officer