

Deval L. Patrick
Governor
Timothy P. Murray
Lieutenant Governor

# The Commonwealth of Massachusetts

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

JudyAnn Bigby, M.D. Secretary

> Elin M. Howe Commissioner

Area Code (617) 727-5608 TTY: (617) 624-7590

.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 <u>DENIED</u>.

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:

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

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 2010 at the Department's in Massachusetts.

Those present for all or part of the proceedings were:

**LCSW** 

's Individual Therapist 's father 's mother

Frederick Johnson, Psy.D. James Bergeron, Esq.

**DDS** Psychologist Attorney for DDS

was not present at the Hearing by agreement of the parties.

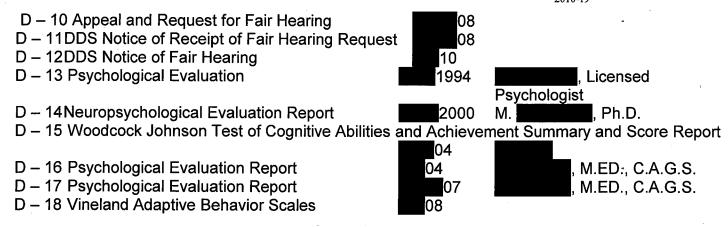
The evidence consists of documents submitted by the Appellant numbered A 1 - 8, documents submitted by the Department of Developmental Services numbered D 1 - 18, and approximately two and a half hours of oral testimony.

#### APPELLANT'S EXHIBITS

DOCUMENT	DATE	AUTHOR
	10 _CSW 10	Mr. and Mrs.
A – 3 Individualized Educational Plan	09	Public Schools
A – 4 Occupational Therapy Evaluation	00	, MS, OTRL
A – 5 Occupational Therapy Evaluation	98	<u>, M</u> S, OTRL
A – 6 Motor Assessment	94	, MŚ, OTRL
A – 7 Speech and Language Evaluation	00	, MS, CCC-SLP
A – 8 s Notes	10	
Exhibit A – 8 was included by Appellant and numbered by me for identification		

## DEPARTMENT OF DEVELOPMENTAL SERVICES EXHIBITS

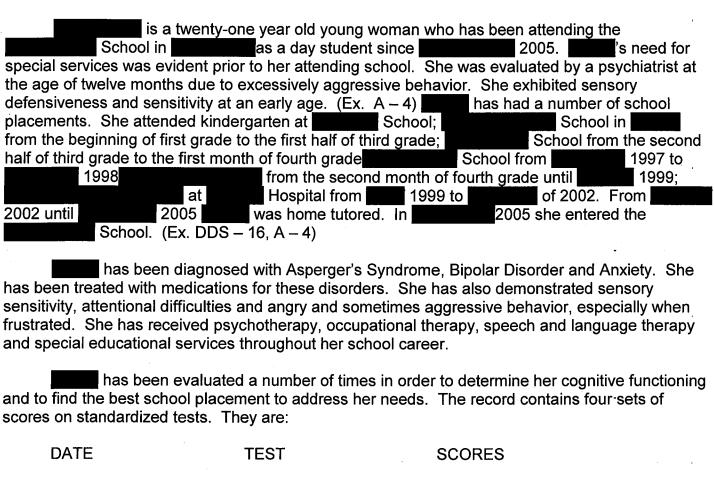
	DOCUMENT	DATE	AUTHOR
D-2 D-3 D-4 D-5 D-6 D-7 D-8	Vita Frederick Johnson, Psy. D. 115 CMR 6.04 General Eligibility (excerpts) 115 CMR 2.01 Definitions (excerpts) DDS Application for Eligibility DDS Eligibility Report DDS Eligibility Determination Letter Appeal of Eligibility Determination DDS Informal Conference Attendance Sheet Informal Conference Results and Eligibility	08 08 08 08 08 08 708	F. Johnson, Psy.D.
	Determination Letter		



#### **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



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

2010-19 Performance IQ 74 2004 Weschler Intelligence Scale Full Scale IQ 77 (Ex. DDS 16) For Children – Fourth Edition Verbal Comprehension Index 96 Perceptual Reasoning Index 82 Working Memory Index 86 Processing Speed Index 62 2007 Weschler Adult Intelligence Full Scale IQ 84 (Ex. DDS 17) Third Intelligence 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 impulsivity and resistance to testing tasks. She felt that if able to participate in the testing more would have obtained higher scores. (Ex. A - 6) 1998 participated in a three and one half hour Occupational Therapy exhibited extreme distractibility to visual input. At times Evaluation. (Ex. A – 5) 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. varied during the evaluation. Her sensory defensiveness and visual perceptual problems were evident. (Ex. A-4) participated in Speech and Language Evaluation between and and 2000. The evaluation was supposed to be conducted during sessions of thirty minutes two times per week. Due to assences from school and her difficulty adjusting to school many days, the evaluation period did not start until was distracted, fidgety, tearful and resistant to I. I 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.

<u>Significant Limitations in Adaptive Functioning</u> 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.

<u>Significantly Sub-average Intellectual Functioning</u> 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 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 sabilities.

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

2010-19

6. I find that <b>Exercises</b> 's limitations in retardation.	adaptive functioning are not related to mental			
the state of the s	n with mental retardation.			
After a careful review of all the evidence presented, I find that 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 does correct and should be upheld.	not meet the criteria set out in 115 CMR 6.04 is			
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:	Core Maskingson			
	Sara Mackiernan Hearing Officer			