

The Commonwealth of Massachusetts

Executive Office of Health & Human Services

Department of Developmental Services

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2010

MA

Re: Eligibility Appeal of _____ - Final Decision

Dear _____:

This letter will serve as notice of the Department of Developmental Services' (the "Department's" or "DDS's") decision concerning the eligibility for DDS Family Support services for _____ ("the Appellant"). A Fair Hearing was convened in this matter on _____ 2010.¹ Your appeal is hereby remanded to the Hearing Officer for further consideration consistent with this letter.

Following the hearing, the Hearing Officer submitted a Recommended Decision ("Decision") to the Department as required by 115 CMR 6.33(2)(h).² The Hearing Officer's Decision is remanded (returned to the Hearing Officer for further consideration) because, as currently written, it appears to be not in accordance with law. The Decision is not clearly supported by substantial evidence and is based upon an incorrect legal standard. The Hearing Officer is directed to amend the Decision to support her conclusion adequately with findings based upon the evidence submitted, and to apply the appropriate criteria for eligibility as set forth below.

This appeal concerns the Department's determination that the Appellant is ineligible for "Child Family Supports services," see 115 CMR 6.01-6.06. The central issue is whether the Appellant had a "closely related developmental condition," one of the criteria for eligibility. 115 CMR 6.06 (1); 115 CMR 2.01.

¹ The Recommended Decision cites the hearing date as having occurred on _____ 2009; this is a typographical error.

² The Hearing Officer's Recommended Decision is enclosed for your review.

The Record

Evidence was presented at the hearing regarding the Appellant's diagnoses relevant to establishing a "closely related developmental condition," specifically PPD-NOS and Autistic Disorder. Decision, pages 3-6. However, it does not appear that the Hearing Officer made any specific finding that the Appellant has a verified diagnosis of a closely related developmental condition, either PDD-NOS or Autism Disorder, or both, based upon this evidence.

Rather than relying upon the evidence submitted at the hearing, either documentary evidence or testimony, *id.*, to support the fact that Appellant has such diagnoses the Hearing Officer found that the Appellant had a "closely related developmental condition" because the Department had previously determined that the Appellant was eligible for the Autism Division. Decision, page 8. The Hearing Officer relied upon her reading of the "DDS Autism Waiver Overview," available on the Department's website, which described the clinical eligibility standards used by DDS to determine eligibility for that Program which is administered by the Autism Division, to conclude that the Appellant must be eligible Children's Family Support since the criteria for the Autism Waiver Program was similar to that of Children's Family Supports program. Decision, page 8, footnote. 3.

The evidence of the Appellant's eligibility for the Autism Spectrum Division consisted of the Appellant's mother's statement and a 2009 letter from the Regional Eligibility Manager informing that "on the basis of the information gathered from the Diagnostic Verification Process," she met the Autism Spectrum Division's eligibility criteria. No specific information concerning the reasons for her being found eligible for Autism services was provided nor was any evidence offered regarding the Appellant's eligibility for the Autism Waiver program.

Legal Analysis

The Hearing Officer's Decision must be remanded because the Hearing Officer improperly conflated two eligibility standards, one for Children's Family Supports and one for the Medicaid Autism Waiver program³; she drew the conclusion about eligibility for Family Supports based upon speculation that the Appellant was eligible for a separate and distinct program, the Autism Waiver. The Hearing Officer's conclusion that the Appellant had PDD-NOS or Autism Disorder based upon the possibility that PDD-NOS or Autism Disorder had been established in another determination utilizing different standards is legal error.

The Hearing Officer should have considered and weighed the evidence presented by both the Appellant and the Department as to the existence -or nonexistence- of a diagnosis that was a "closely related condition" to mental retardation, and drawn some conclusion therefrom. Instead, the Hearing Officer erroneously concluded that either or both Autism Disorder and PDD NOS had been verified because she had concluded that the Appellant

³ The Autism Spectrum Division provided supports under the Autism Spectrum Disorder Waiver ("Autism Waiver"), a Medicaid Home and Community-based Services program for children.

was eligible for the Autism Waiver Program and, therefore, that the Appellant met the regulatory criteria of having a closely related developmental condition. This conclusion is unsupported by the evidence presented at the hearing and is legal error. See *Massachusetts Inst. of Tech. v. Department of Pub. Util.*, 425 Mass. 856 at 868-875 (1997); *Herridge v. Board of Registration in Medicine*, 420 Mass. 154 at 164 (1995) (Where inference drawn by Board was speculative, the court deemed it unsupported by substantial evidence in the record.)

The Hearing Officer found that there was "some difference of opinion on the Appellant's diagnosis relative to PDD NOS[.]" Decision, page 8, but did not explain or reconcile the differences of opinion in a manner that would allow the Department, or a reviewing court, to meaningfully evaluate the decision for compliance with G.L. c. 30A. The Hearing Officer also did not review the evidence pertaining to Autistic Disorder in the manner described. The Hearing Officer is hereby directed to consider all the evidence submitted at the hearing of the existence of this condition with respect to the Appellant, and to weight the conflicting evidence and explain her conclusions with respect to each piece of evidence. See *Herridge*, 420 Mass. at 164-165 (In the face of conflicting evidence, the Board could not choose to rely on portions of testimony and reject other, significant portions of it, and fail to explain its reasons for doing so.) See also *Massachusetts Inst. of Tech.*, 425 Mass. at 868, 874 and note 42, 875 (case remanded for further proceedings where agency's subsidiary findings were insufficient to allow a court to meaningfully review decision or determine whether decision was arbitrary).

Finally, to the extent that the Hearing Officer based her decision on the *inadequacy* of evidence presented at the hearing to establish a verified diagnosis of closely related developmental condition (PDD-NOS or Autism Disorder) this conclusion is also legal error. The inadequacy of the evidence presented inures to the detriment of the Appellant who bears the burden to prove by a preponderance of the evidence.

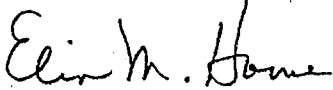
Therefore, the Hearing Officer's Recommended Decision was "based on an error of law; arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 115 CMR 6.33(2)(i).⁴ Because the Hearing Officer's Recommended Decision that the Appellant is a person with a closely related developmental condition was based upon an error of law, it therefore is not adopted. See M.G.L. c.30A, §14(7). See also *Massachusetts General Hospital v. Commissioner of Public Welfare*, 350 Mass. 712, 720 (1966); *Taylor's case*, 44 Mass. App. Ct at 501. For this reason, the Hearing Officer's conclusion that the Appellant has a closely related developmental condition is stricken and this matter is remanded to the Hearing Officer to amend the Recommended Decision

⁴"In the absence of clear error, an agency's interpretation of its own rule is entitled to deference." *Massachusetts Auto Body Ass'n. v. Commissioner of Insurance*, 409 Mass. 770 (1991), citing *Purity Supreme Inc. v. Attorney General*, 380 Mass. 762, 782, 407 N.E. 2d 297 (1980). That deference prevents a court from interfering with an administrative determination (regulatory or adjudicatory) unless it is shown to be arbitrary or capricious, *Tarin v. Commissioner of Div. of Medical Assistance*, 424 Mass. 743, 750-751, 678 N.E.2d 146 (1996); or is one supported by "no grounds which 'reasonable men might deem proper to support it[.]'" *T.D.J. Dev. Corp. v. Commissioner of N. Andover*, 36 Mass. App.Ct. at 128, 629 N.E.2d 328(). The basic rule is that "[i]f the agency has, in the discretionary exercise of its expertise, made a 'choice between two fairly conflicting views,' and its selection reflects reasonable evidence, "[a] court may not displace [the agency's] choice."

to include findings of fact based upon the evidence submitted at the hearing and a decision consistent with Department regulations governing child eligibility for Family Support services. 115 CMR 6.06.

As stated above, you, or any person aggrieved by this decision may appeal to the Superior Court in accordance with Massachusetts General Laws, Chapter 30A.

Sincerely,



Elin M. Howe
Commissioner

EMH/ecw

cc: Marsh Hudgins, Hearing Officer
Amanda Chalmers, Regional Director
Marianne Meacham, General Counsel
Barbara Green Whitbeck, Assistant General Counsel
Paula Potvin, Regional Eligibility Manager
Patricia Shook, Psychologist
File

¹COMMONWEALTH 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 March 26, 2009 at DDS's Hogan Regional Center in Hathorne, Massachusetts

Those present for the proceedings were:

[REDACTED], Psy.D.
Patricia Shook, Ph.D
Barbara Green Whitbeck
Paula Potvin

Appellant's mother
Psychologist
DDS Psychologist
Attorney for DDS
DDS Regional Eligibility Manager

The evidence consists of documents jointly submitted by the Appellant and DDS numbered 1-15 and approximately 1 and 1/2 hours of oral testimony. The Appellant offered no expert testimony. I also reviewed the Autism Waver Program Overview which I obtained from the Department's website.

ISSUE PRESENTED

Whether the Appellant meets the child eligibility criteria for DDS Family Supports as set out in 115 CMR 6.06.

SUMMARY OF THE EVIDENCE PRESENTED

1. The Appellant is 7 year old female who resides with her family in [REDACTED] Massachusetts. (4,6-7, testimony of Appellant's mother)
2. This Appeal is based on the Appellant's denial of eligibility for DDS Family Support Services based on the determination that she did not meet DDS criteria for developmental disabilities. (4,)

¹The name of the Department of Mental Retardation (DMR) changed to the Massachusetts Department of Developmental Services (DDS) on June 30, 2009.

3. Six evaluations of the Appellant's intellectual functioning and behaviors were entered into evidence. (7-11,13)
4. Two Vineland-II Adaptive Scales (Vineland-II) Survey Interview Form Reports were entered into evidence. (14-15)
5. Three letters of support for DDS eligibility were entered into evidence. (12, 16-17)
6. A letter dated March 6, 2009 signed by Victoria Wolf, Regional Eligibility Manager stated that the Appellant met the Autism Spectrum Division's eligibility criteria.(4)
7. In November of 2007 when the Appellant was five years [REDACTED] of age, she was evaluated by a team of doctors from [REDACTED]. The team was made of [REDACTED] MD., Fellow in Developmental Medicine, [REDACTED] MD, M.P.H., [REDACTED] Ph.D., Staff Psychiatrist. The Section of the report labeled Pediatric Assessment/Behavioral Observations stated that the Appellant's language was very difficult to understand at times due to articulation problems and that she required some repetition of directions and comments. The section labeled Neurodevelopmental Assessment noted that the Appellant's speech intelligibility was clearly impaired and that she required repetition for directions for several tasks.

The report stated that the Appellant's functional adaptive skills were evaluated using the Vineland-II which was administered by [REDACTED] MD to the Appellant's mother. The result of this evaluation was that the Appellant's adaptive behavior composite score was well within the moderately low range. Her functional daily living skills fell within the moderately low range; her functional communication skills fell in the adequate range; her functional socialization skills fell within the moderately low range and her functional motor skills fell within the adequate range. The Neurodevelopmental Assessment concluded that the Appellant had significant articulation and receptive communication problems and presented with difficulties in both language and motor skills.

The Appellant was given the Wechsler Preschool and Primary Scale of Intelligence-Third Edition (WPPSI-III). The report states that her overall cognitive abilities were nicely developing with the average range for her age. It also states that her verbal abilities and her performance abilities were not significantly different from each other. On Pre-Academic testing of Achievement Skills, the Appellant's overall early reading skills were average as compared to her peers. She also demonstrated average math skills for her age.

The team concluded that the Appellant's speech intelligibility was quite limited due to articulation problems, and she had difficulty following directions due to comprehension difficulties. They found that these difficulties are consistent with a diagnosis of Communication Disorder, Not Otherwise Specified. They also felt she

demonstrated impairment of growth and fine motor skills consistent with a diagnosis of Developmental Coordination Disorder. The team also noted that despite her limitations, the Appellant demonstrates a number of strengths including her solid cognitive ability. (7)

8. In May of 2008 when the Appellant was 5 years [REDACTED] of age, she was seen for a follow-up by the [REDACTED]. During this visit [REDACTED] MD, MPH was the attending physician. The report of this follow up states that the Appellant's mother reported that the Appellant was demonstrating increased anxiety with a significant sensory component as well as frequent daydreaming. It also states that the Appellant's therapist, [REDACTED] MA, LMHC, Psy.D. raised concerns for obsessive-compulsive disorder and pervasive developmental disorder. The report notes that the Appellant was seen by [REDACTED], MS, CCC-SLP, at [REDACTED] who agreed that the Appellant has significant language needs in both expressive and receptive language. The report states that the Appellant was assessed by [REDACTED] Ph.D, using the Autism Diagnostic Observation Schedule (ADOS) and that the Appellant's presentation was not consistent with an autism spectrum disorder. The report states that the Appellant's presentation of elevated anxiety with the emergence of obsessive thoughts and compulsive behaviors met the criteria for both a Generalized Anxiety Disorder and Obsessive-Compulsive Disorder. It concluded that she continued to meet the criteria for Communication Disorder, but that her difficulties did not appear to be due to an autism spectrum disorder. Dr. [REDACTED] who assessed the Appellant in her previous evaluation concurred with this assessment after meeting with the Appellant and her mother. (8)
9. The Appellant returned to the Developmental Medicine Center in August of 2008 when she was 6 years [REDACTED] of age for a follow-up. Mention was made of the mother's observation that the Appellant's articulation had improved but that she continued to have difficulty following two step directions. The report points out that the Appellant underwent a fine motor assessment and that the assessment revealed that the Appellant performed at the 14th percentile which is borderline motor impairment. The report concluded that in the context of a Communication Disorder and an Anxiety Disorder, the Appellant continues to demonstrate fine motor needs necessitating continued occupational therapy. There was no mention made of an autism spectrum disorder or of a pervasive developmental disorder. (9)
- 10 In October of 2008 when she was 6 years [REDACTED] of age the Appellant was seen for a neurological consultation at the [REDACTED], MD Dr. [REDACTED] who is the Director of Pediatric Epilepsy and EEG noted the Appellant's evaluations at the [REDACTED] and set out the diagnoses given by the team. She also noted that the ASOS had been administered but did not give the results of the evaluation. After interviewing and observing the Appellant for over 2 hours Dr. [REDACTED] concluded the Appellant has a pervasive developmental disorder not otherwise specified. She explained that this is a

diagnosis used for children who have many of the features of an autistic spectrum disorder, but do not meet the full criteria. Dr. [REDACTED] appears to base her diagnosis on the Appellant's communication problems and her difficulties in playing as well as her repetitive behaviors and likely compulsions. Dr. [REDACTED] did not believe that the Appellant's staring was due to seizures. She noted that she suspected that the Appellant's overall level of intelligence is within the normal range, but perhaps on the lower side. She pointed out that the Appellant has trouble comprehending and processing information, particularly if it is not broken down into simple components. (10)

11. April of 2009 when the Appellant was 6 years [REDACTED] of age, she was again seen by Dr. [REDACTED]. The Appellant's mother accompanied her to the examination and in all likelihood reported the Appellant's progress to the doctor. The report states that the Appellant was doing better in school since being placed in an inclusion classroom. It states that the Appellant passed math but is struggling with reading comprehension. Dr. [REDACTED] states that the Appellant's obsessive-compulsive symptoms have been increasing. She also states that the Appellant's new teacher has observed her staring. In this report, Dr. [REDACTED] again states that the Appellant has pervasive developmental disorder accompanied by obsessive-compulsive symptoms and sensory integration disorder. In her report, Dr. [REDACTED] states that the Appellant would benefit from services from the Department of Developmental Disabilities as well as from social skills training outside of school. (11)

12. In July of 2009 when the Appellant was 7 years of age, she was evaluated at the [REDACTED], Ph.D, a Neuropsychologist; [REDACTED] MS, CCC-SIP, a Speech/Language Pathologist and [REDACTED] M.Ed., an Educational Specialist took part in the Evaluation. They wrote a lengthy report and offered the following Diagnostic Impressions: The results of neuropsychological testing revealed the Appellant's level of intellectual ability at the upper end of the low average range. This was based on the administration of the Wechsler Intelligence Test for Children – fourth edition (WISV-IV). Her Full Scale IQ score was 89, 23rd percentile. They noted that the results of cognitive testing indicated a developmentally based language deficit with receptive, expressive and amnesic features that have impacted the Appellant's academic achievement. On the Kaufman Test of Educational Achievement-II (KTEA-II) which was administered to the Appellant at the end of 1st grade, she attained the following grade equivalent scores: Letter and Word Recognition – 1.7, Nonsense Word Decoding – 1.6, Reading Comprehension – 2.0, Written Expression – 1.4, Math Concepts and Applications – K.5, Math Computation – 1.4. The team noted that the Appellant had made gains in speech intelligibility and continued to have mild/ moderate delays in receptive and expressive language areas. They also noted that she had limited oral language and social language and should have intensive services to support the needs of a language-learning disability (LLD). Educational testing revealed that the Appellant's language weaknesses interfere with her understanding

of narrative interpretation of accompanying pictures, written expression and with math problem solving and conceptual understanding. The report also pointed out that the Appellant's computational skills are below average. (13)

13. The two Vineland-II Survey Interview Form Reports introduced showed different scores in the areas of Communication, Daily Living Skills, Socialization, and Motor Skills as well as the Adaptive Behavior Composite. The Appellant's mother scored the Appellant, Low in all of the aforementioned areas while her [REDACTED], the Appellant's Special Education Teacher scored her Adequate in all areas with the exception of Motor Skills in which she scored the Appellant as Moderately Low. (14-15)
14. Three letters of support for DDS services were submitted. Two letters were written by the Appellant's therapist [REDACTED] MA, Psy.D., LMHC. One letter was written by [REDACTED], MD. Both state that the Appellant has among other diagnoses, one of Pervasive Developmental Disorder NOS, PDD-NOS and would benefit from the services of DDS. Dr. [REDACTED] states that if such services are not provided the Appellant will be negatively impacted. Neither Dr. [REDACTED] nor Dr. [REDACTED] provided the results of any testing or examinations performed by them or other professionals in their letters. (12, 16-17)
15. [REDACTED] testified on behalf of the Appellant. She stated that she was the Appellant's mother and that her daughter was almost 8 years of age. She outlined some of the diagnoses that the Appellant has received including PDD NOS, general anxiety disorder, coordination disorder and communication disorder. She stated that her daughter was currently in an inclusion program and barely getting by. She believes that her daughter needs extensive therapy in many areas and that she qualifies for DDS services. Ms. [REDACTED] testified that she knows of other children who are on the autism spectrum that are receiving DDS supports. She verified that her daughter has met the DDS Autism Spectrum Division's eligibility criteria. Ms. [REDACTED] also stated that her husband has been out of work and that the Appellant has not been getting the therapy that she needs due to the cost and the lack of insurance.
16. [REDACTED], MA, Psy.D., LMHC testified on behalf of the Appellant. Dr. [REDACTED] stated that although she has her doctorate in Clinical Psychology she is not a licensed psychologist in the Commonwealth of Massachusetts. She did not provide me with a CV despite my willingness to have her provide it to me sometime after the close of the hearing. I did not qualify Dr. [REDACTED] as an expert in the field of Developmental Disabilities. Dr. [REDACTED] testified that she is the Appellant's therapist and has been meeting with her weekly since 2008. She testified that the Appellant has significant social issues and a communication disorder. She stated that she has seen a change in the Appellant's behavior. She testified that although the Appellant's IQ seems to be fine - a Full Scale of 89, she doesn't retain information. She stated that someone who would come into the Appellant's home to help the family understand how to deal with the Appellant would be helpful. Dr. [REDACTED]

testified that she believed that the Appellant had functional impairments in self-direction and communication.

17. Patricia Shook, Ph.D. testified as an expert witness on behalf of DDS. She stated that she is the DDS Eligibility Specialist for the Northeast Region and has been in that position for four and a half years. She stated that in this role she makes eligibility determinations based on information provided to her relative to an individual applying for DDS services. She stated that in making her determination in the instant case that she reviewed the Appellant's documentation and participated in an informal conference. She also stated that that she reviewed additional information provided to her by the Appellant including the Appellant's last neurological examination. She stated that in her opinion the Appellant is not eligible for DDS family supports. Dr. Shook recited the DDS regulations relative to eligibility for family supports. She stated that the individual must be under the age of 18, domiciled in the Commonwealth of Massachusetts, have an intellectual disability or a closely related condition such as PDD NOS and have severe functional impairments. She testified that she believed that the Appellant's functional limitation was primarily in the area of language. Dr. Shook noted that the Appellant had been found eligible for DDS autism services. Dr. Shook reviewed the documents that she took into consideration when making her decision of ineligibility. She said that in reviewing the [REDACTED] report of November 2007, she looked at the results of the Wechsler and the Vineland. She stated that the report indicated that the Appellant's had an articulation problem but that her IQ scores were in the average range. She also noted that the team offered a diagnoses of a Communication Disorder, Hypotonia and Developmental Coordination Disorder. Dr. Shook reviewed the letter from [REDACTED] MD of [REDACTED] from May of 2008. She pointed out that in that letter, mention was made of testing done concluding that the Appellant's presentation was not consistent with an autism spectrum disorder. She noted that the report stated that the Appellant's elevated anxiety and compulsive behaviors met diagnostic criteria for Obsessive Compulsive Disorder and Anxiety Disorder and that she continued to meet diagnostic criteria for a Communication Disorder. Dr. Shook reviewed a letter from [REDACTED] MD, MPH of [REDACTED] from August 2008 and stated that the Appellant continued to be diagnosed with a Communication Disorder and that she continued to demonstrate fine motor needs necessitating the need for continued occupational therapy. Dr. Shook reviewed two reports written by [REDACTED] MD. Both reports that the Appellant has pervasive developmental disorder not otherwise specified, but Dr. Shook pointed out that although the ADOS was administered at [REDACTED], [REDACTED] did not see the report. She also pointed out that Dr. [REDACTED] did not conduct any testing to aid her in reaching this diagnosis. Dr. Shook testified that Dr. [REDACTED] letter of June 2009 states that she has been treating the Appellant for Pervasive Developmental Disorder NOS as well as Obsessive Compulsive Disorder, Mixed Receptive-Expressive Language Disorder and Enuresis and makes mention of the Appellant's increase in staring spells and more obsessive behaviors as well as her difficulty in communication. Dr. Shook reviewed the Tuft's report and noted that the team did not diagnose the

Appellant with PDD NOS. She also pointed out that they commented on her learning which did not seem to be severely impaired. Dr. Shook reviewed the two Vineland-II Reports and noted that the Appellant's mother's survey found the Appellant's adaptive behaviors to be low while the Appellant's teacher found her adaptive behaviors to be adequate. Dr. Shook stated that in her opinion the Appellant's teacher's survey was more in line with the other information that she reviewed. (1, 7-15)

FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence and despite her many needs, I find that the Appellant has failed to show by a preponderance of the evidence that she meets the DDS eligibility criteria for family supports. My specific reasons are as follows:

In order to be eligible for DDS family supports, an individual who is younger than 18 years of age must meet the criteria set forth at 115 CMR 6.06 (1): (a) she must be domiciled in the Commonwealth, (b) she must have a verified diagnosis of intellectual disability or a closely related developmental condition as defined in 115 CMR 2.01 or with respect to persons from age birth to five a developmental delay. (c) she must demonstrate severe functional impairments as defined in 115 CMR 2.01. There is no dispute that the Appellant meets the first criteria, and I specifically find that she meets that criterion. I also find that she has a closely related developmental condition.

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, the Department has promulgated regulations which define mental retardation. The Department's regulations define mental retardation as significantly sub-average intellectual functioning existing concurrently and related to significant limitations in adaptive functioning. Mental retardation manifests before age 18. Significantly sub-average intellectual functioning is defined as an intelligence score that is indicated by a score of 70 or below as determined from the findings of an assessment using valid and comprehensive, individual measures of intelligence that are administered in standardized formats and interpreted by qualified practitioners.² Severe functional impairments as defined in 115 CMR 2.01 mean functional impairments in at least three specified areas of adaptive functioning, based upon normative expectations of the types of skills normally acquired as the child develops, as measured by standardized assessment or comparable data. The areas of adaptive function considered are: self care, communication (receptive or expressive language), learning, mobility and self-direction and for individuals age 14 or older, capacity for independent living and economic self-sufficiency. Closely Related Developmental Conditions means genetic, neurodevelopmental or physical disorders that

² 115 CMR 201 states that intellectual disability is the preferred term used to describe the condition of mental retardation and for the purposes of 115 CMR 2.00, is synonymous with the term mental retardation.

have a significant overlap with intellectual disability, and result in similar support needs. For purposes of 115 CMR 6.001 (1), closely related developmental conditions may include: Williams Syndrome, Prader-Willi Syndrome, Lesch-Nyhan Syndrome, Angelman Syndrome, Cris du Chat Syndrome, Down Syndrome, Fragile X Syndrome, Cerebral Palsy. Pervasive Developmental Disorders including the following specified autism spectrum disorders: Autistic Disorder, Rett's Syndrome, Childhood Disintegrative Disorder, and Pervasive Developmental Disorder Not Otherwise Specified (NOS), Spina Bifida (Myelomeningocele type MMCTuberous Sclerosis, Fetal Alcohol Syndrome or any other developmental disorder that the Department determines to be a closely related condition.

I find that the Appellant does not have a verified diagnosis of intellectual disability as that term is used for the determination of DDS family supports. The WPPSI-III that was administered when she was five years ██████████ of age showed that her overall cognitive abilities were nicely developing and within the average range for her age. Early reading and math skills were also found to be average for her age. Dr. ██████████ stated that she suspected that the Appellant's overall level of intelligence was within the normal range, but perhaps on the lower side. When the Appellant was 7 years of age, she received a Full Scale IQ score of 89 far beyond the 70 required for a finding of intellectual disability.

I also find that although DDS determined that the Appellant has a related developmental condition by its finding that she meets its Autism Spectrum Division's Eligibility criteria³, the weight of the evidence does not support a finding that she has severe functional impairments in at least three specified areas of adaptive functioning. Based on the documents presented as well as the testimony given, I find that she has such impairments only in the area of communication. There was conflicting evidence concerning the Appellant's adaptive functioning ranging from adequate to low. While it appears that she has some difficulty in the areas of self care and learning, the weight of the evidence did not show that these difficulties rose to the level of severe functional impairments.

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: _____

 Marcia A. Hudgins
 Hearing Officer

³ The DDS Autism Waver Overview states that to be eligible for the Autism Spectrum Program the child must have a confirmed diagnosis of an Autism Spectrum Disorder which includes an Autistic Disorder as well as PDD-NOS.