2010-26

The Commonwealth of Massachusetts

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

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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 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: Jeanne Adamo, 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

COMMONWEALTH 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 115 CMR 6.30 – 6.34 (formerly known as Department of Mental Retardation, hereinafter referred to as "DDS" or "Department") and M.G.L. C.30A. A fair hearing was held on [redacted] 2010 at the [redacted] in [redacted], Massachusetts.

Those present at the hearing were:

[redacted]	Father & Authorized Representative
Barbara Green Whitbeck, Esq.	Counsel for DDS
Patricia Shook Ph.D.	Licensed Psychologist

The Fair Hearing proceeded under the informal rules concerning evidence with approximately one and one-half hours of testimony presented. The Appellant's evidence consists of one exhibit and sworn oral testimony from Mr. [redacted], the Appellant's father. The evidence presented on behalf of the Department consists of fifteen exhibits and sworn oral testimony from Dr. Patricia Shook, the Department's Licensed Psychologist.

At the close of the fair hearing, the Department was allowed additional time to submit requested information regarding this appeal. As a result the record remained open until [redacted] 2010.

ISSUE PRESENTED:

Whether the Appellant is eligible for DDS services by reason of Mental Retardation as defined in 115 CMR 6.04(1)

BACKGROUND:

The Appellant, Ms. [redacted], is a twenty-three year old woman who at age thirteen suffered [redacted]. Ms. [redacted] was adopted [redacted] as an infant, initially lived with her family in [redacted] for a while and then moved with her family to the United States. She had lived with her parents in Massachusetts until approximately five months ago when she [redacted] to live with relatives who are paid by the Appellant's father to care for her.

Ms. [redacted] has a history of reporting sexual abuse and sexual harassment that is not substantiated by the facts, and she becomes extremely upset that her family does not believe her when she reports this kind of abuse. Her record of distorting or misinterpreting the

actions of others have made it difficult for her to function in a work setting. The Appellant was working as a [redacted] at the time of the most recent incident of alleged sexual abuse. The Appellant filed a complaint with the [redacted] Police and [redacted]; she was then brought to [redacted] for psychiatric treatment where she remained for approximately eight months. The Appellant's admission was reportedly prolonged because she refused to be discharged to her home and all attempts to secure placement or obtain services from state agencies and private organizations were unsuccessful. [redacted] record indicates that while under treatment at [redacted], the Appellant was reportedly inappropriately flirtatious both verbally and physically [redacted]. The [redacted] discharge summary states that they observed the Appellant's behavior [redacted] and became aware of her dramatic capacity to misinterpret the actions or intentions of others and opined that some of what the Appellant interpreted as sexual harassment may have been misconstrued.

The Appellant was declined services by DMH, DDS, and agencies that provide services to individuals with traumatic brain injury. The Appellant's father reportedly tried ceaselessly to advocate for his daughter's interest, engaging her state representative's office and [redacted] to attempt to revisit or appeal some of these denials. The Appellant's father wanted his daughter to be discharged from the psychiatric service [redacted] but was concerned that other people around his daughter might get into legal trouble for claims that might be distortions or misinterpretations and therefore did not want her to return home to the prior status quo. The Appellant's family developed a discharge plan that allowed the Appellant to leave [redacted] on [redacted] 2010; arrangements were made with the mother's extended family [redacted] to care for the Appellant, at least on an interim basis, while the parents continue to advocate for services in Massachusetts.

The Appellant's father is paying for his daughter's room and board and all the activities and services she receives under the care of extended family [redacted]. The Appellant reportedly is living [redacted]. Her father is paying for all expenses which are reportedly significantly less than the cost of obtaining similar services in Massachusetts. The Appellant is reportedly pleased with the arrangement and is actively engaged taking tennis, golf and dance lessons. However, the Appellant's father cannot continue to pay for this care indefinitely and is concerned about what will happen when he no longer is able to do so.

The Appellant applied for DDS services on [redacted] 2009 and was denied based on a failure to meet the criteria for a diagnosis of Mental Retardation as defined in 115 CMR 2.01. An appeal of the denial of services was submitted and an Informal Conference was held on [redacted] 2010, at which time the Appellant's ineligibility ruling was upheld. The Appellant appealed that decision and, a Fair Hearing was held on [redacted], 2010. The Appellant was not present at the Fair Hearing but has reportedly given verbal permission to her father, Mr. [redacted], to serve as her authorized representative.

SUMMARY OF THE EVIDENCE PRESENTED:

EXHIBITS:

The following exhibits were accepted into evidence:

Appellant Exhibit #1

Discharge Summary from [redacted], written by [redacted], MD, dated [redacted] 2010, regarding the Appellant's admission, treatment and discharge plan.

DDS Exhibit #1

Curriculum Vita of Dr. Patricia H Shook, Ph.D.

DDS Exhibit #2

Copy of 115 CMR 2.01 Definitions

DDS Exhibit #3

Excerpts from 115 CMR 6.04 General Eligibility

DDS Exhibit #4

Department's Adult Eligibility Determination denying eligibility to the Appellant, signed by Dr. Patricia Shook, dated [redacted] 2009.

DDS Exhibit #5

Department's Eligibility Determination Notification letter sent to the Appellant, from Paula J. Potvin, Regional Eligibility Manager, dated [redacted] 2010.

DDS Exhibit #6

Letter, dated [redacted] 2010, requesting an appeal of the Department's determination of ineligibility, sent to Amanda Chalmers, Regional Director, from the Appellant and [redacted], Clinical Social Worker, [redacted].

DDS Exhibit #7

Letter to the Appellant dated [redacted] 2010, from Paula J. Potvin, Regional Eligibility Manager, notifying the Appellant of the results of the Informal Conference held on [redacted] 2010.

DDS Exhibit #8

DDS's Notice of Receipt of Fair Hearing Request, sent by Elizabeth C. Wolfgang, Hearing Administrator, to the Appellant, dated [redacted] 2010.

DDS Exhibit #9

DDS's Fair Haring Scheduling Notice, sent by Elizabeth C. Wolfgang, Hearing Administrator, to the Appellant, dated [redacted] 2010.

DDS Exhibit #10

Neuropsychological Assessment Report of the Appellant, conducted in [redacted] 2000, at the Appellant age of thirteen years, [redacted] by Clinical Neuropsychologist, [redacted], Ph. D., at the [redacted]

DDS Exhibit #11

Neuropsychological Assessment Report of the Appellant, conducted in [redacted] 2001, at the Appellant age of fourteen years, by Licensed Clinical Psychologist and Clinical Neuropsychologist, [redacted], Ph. D., ABPP/CN at [redacted].

DDS Exhibit #12

Neuropsychological Evaluation Report of the Appellant, conducted in [redacted] and [redacted] 2005, at the Appellant age of eighteen, by Pediatric Neuropsychologist, [redacted], Ph. D., from [redacted].

DDS Exhibit #13

Neuropsychological Evaluation Report of the Appellant, conducted in [redacted] 2009, at the Appellant age of twenty-two, by [redacted], MD., at [redacted].

DDS Exhibit #14

Copy of the Appellant's Individualized Education Program (IEP) covering the period of [redacted] 2002 to [redacted] 2003.

DDS Exhibit #15

The [redacted] Emergency Department Report for the Appellant's [redacted] 2009 emergency admission and the [redacted] 2009 [redacted] Psychiatric Admission notes.

FINDING OF FACTS:

The following facts, which are the basis for conclusions made in this case, emerged from a review of the documents entered into evidence and the testimony presented by witnesses.

1. Appellant is a twenty three year old woman who is currently living with her mother's extended family [redacted] reportedly on an interim basis, while her parents continue to advocate for services in [redacted]. (Testimony, Mr. [redacted])

2. The Appellant was adopted as an infant [redacted] and is able to converse in English and in [redacted] which is spoken [redacted]. (Testimony, Mr. [redacted] & DDS Exhibit #11)

3. The Appellant suffered [redacted] at age thirteen. She was hospitalized at [redacted] and transferred to [redacted] where, because

imaging studies revealed [redacted], she was reportedly placed in a chemical-induced coma for six weeks. The Appellant was transferred from [redacted] to [redacted] in [redacted] 2000 where an educational assessment revealed poor memory skills and communication difficulties. (DDS Exhibits #11 & #4)

4. The Appellant received special education services at [redacted] for learning and physically disabled children; the Appellant received occupational therapy, physical therapy and communication therapy in addition to regular course-work. (DDS Exhibits # 11 & #14)

5. The Appellant has been employed in unskilled work, most recently as [redacted]. (Testimony, Mr. [redacted] Appellant Exhibit #1, & DDS Exhibit #4)

6. The Appellant has a history of reporting sexual abuse and sexual harassment that is not substantiated by the facts, and she becomes extremely upset that her family does not believe her when she reports this kind of abuse. (Testimony, Mr [redacted] & Appellant Exhibit #1)

7. The Appellant reportedly both threatened and attempted suicide in the past. (DDS Exhibit #4)

8. The Appellant filed a complaint with the [redacted] Police alleging sexual harassment at her workplace [redacted] and [redacted]. She was subsequently brought to [redacted] for psychiatric treatment where she remained for approximately eight months. (Appellant Exhibit # 1)

9. While under treatment at [redacted], the Appellant was reportedly inappropriately flirtatious [redacted]. Professionals treating the Appellant at [redacted] reported that observations of the Appellant's behavior on the unit made them aware of her dramatic capacity to misinterpret the actions or intentions of others and opined that some of what the Appellant interpreted as sexual harassment may have been misconstrued. (Appellant Exhibit #1)

10. The Appellant has alleged sexual abuse by [redacted]. This allegation had reportedly arisen when the Appellant's parents asked [redacted] for assistance in physically restraining the Appellant several years ago when she had been out of control in a temper tantrum. [redacted] had been deeply hurt by her accusations and her parents were very concerned that the Appellant would make unfounded allegations about others. (Appellant Exhibit #1 & Testimony, Mr. [redacted])

11. The Appellant has been denied services from the Department of Mental Health. (Testimony, Mr. [redacted] & Appellant Exhibit #1)

12. The Appellant has been denied services from the agency that service individuals with [redacted]. (Testimony, Mr. [redacted] & Appellant Exhibit #1)

13. The Appellant has been denied services from the Department of Developmental Services. (DDS Exhibit #4)

14. The Appellant was approved for subsidized housing, but her family thought it to be unrealistic to allow her to live independently without supports in place. (Appellant Exhibit #1)

15. The Appellant lived with her family until [redacted] 2009 when she was admitted to [redacted] psychiatric inpatient facility for psychiatric evaluation and treatment. She did not return to her family's home upon discharge [redacted] 2010; she traveled to [redacted] to live with [redacted] family. (Testimony, Mr. [redacted] & Appellant Exhibit #1)

16. The Appellant's father is currently paying for his daughter's room and board and all the activities and services she receives under the care of extended family in [redacted]. (Testimony, Mr. [redacted])

17. The Appellant is living in her [redacted] with the services of a driver and a personal attendant. She is reportedly progressing very well in this setting. (Testimony, Mr. [redacted])

18. The Appellant reportedly is very involved in activities and lessons that are offered to her [redacted] including tennis lessons, golf lessons, and dance lessons. (Testimony, Mr. [redacted])

19. The Appellant's parents want their daughter to return to Massachusetts but must ensure that services are in place before bringing her back home. They have not been able to find any state or private agency that will help their daughter. (Testimony, Mr. [redacted])

20. The Appellant's father is concerned about what will happen to his daughter when he can no longer pay for her care in [redacted]. (Testimony, Mr. [redacted])

21. A Neuropsychological Assessment was conducted by clinical Neuropsychologist [redacted] Ph. D., at the Appellant's age of thirteen years [redacted]. Dr. [redacted] reports that the Appellant was minimally cooperative with the assessment and that she behaved like a much younger child. A TONI-2 cognitive testing was conducted with a resulting score that fell within the average range of intelligence. However, performances on other tasks were severely impaired. (DDS Exhibit #10)

22. A Neuropsychological Assessment was conducted in [redacted] 2001, at the Appellant age of fourteen years, by Licensed Clinical Psychologist and Clinical Neuropsychologist, [redacted], Ph. D., ABPP/CN at [redacted]. Selected sub-tests of the Wechsler Intelligence Scale for Children-Third Edition (WISC-III) were administered. Dr. [redacted] reported that the that the Appellant had significant language difficulties, memory problems and problems with attention and executive system functions but that Appellant's visuospactial skills were measured to be above average. (DDS Exhibit # 11)

23. A Neuropsychological Evaluation of the Appellant was conducted in [redacted] and [redacted] 2005, at the Appellant age of eighteen, by Pediatric Neuropsychologist, [redacted], Ph. D., from [redacted]. A Wechsler Adult

Intelligence Scale-3rd Edition (WAIS-III) was administered. This report referenced prior testing at age sixteen that fell "solidly in the average range" for tasks of abstract verbal and spatial reasoning when demands on language processing were minimized. However, the report states that the Appellant's performance declined to the impaired range when tasks involved retrieving factual knowledge from verbal memory. The Appellant received a Verbal IQ score of 74 and a Performance IQ Score of 102 in this WAIS-III cognitive evaluation; a full scale IQ was not calculated apparently due to the significant discrepancy between these Index scores. Dr. [redacted] states in the "Impressions and Recommendations" section of her report that the Appellant's test results "are consistent with prior testing in highlighting at least average higher-level reasoning, problem solving, and goal-directed executive control processes in the context of a severe language processing disability". (DDS Exhibit #12)

24. A Neuropsychological Evaluation of the Appellant was conducted in [redacted] 2009, at the Appellant's age of twenty-two, by Dr. [redacted]. A Wechsler Adult Intelligence Scale-III (WAIS-III) was administered and resulted in a Verbal IQ of 64, a Performance IQ of 106 with a Full Scale Score reported at 78. (DDS Exhibit # 13)

25. None of the qualified clinicians who administered the cognitive evaluations in evidence reported a diagnosis of Mental Retardation. (DDS Exhibits # 10, #12, #13)

26. The Department reportedly administered a Vineland Adaptive Behavior Scales Second Edition (Vineland-II) on the Appellant in [redacted] 2009 with the Appellant's father as the respondent. The Appellant obtained an Adaptive Behavior Composite of 41, in the low range. (DDS Exhibit #4)

27. Dr. Patricia Shook's, DDS's Licensed Psychologist, is properly credentialed and qualified by licensure and experience in the field of Developmental Disabilities to assess and evaluate cognitive testing and adaptive testing results. (DDS Exhibit # 1)

28. In order to be eligible for DDS adult services, Department regulations require the person to have significantly sub-average intellectual functioning manifesting before age 18 and existing concurrently and related to significant limitations in adaptive functioning. The specific regulations and definitions are found in 115 CMR 6.04 and 2.01 (Testimony Dr. Patricia Shook and DDS Exhibits #2 & #3)

29. The Department has defined "significantly sub-average intellectual functioning" as 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 regulations have both a cognitive and an adaptive functioning component; to meet the adaptive functioning component of the regulations a person must have "significant limitations in adaptive functioning" existing concurrently and related to the sub-average intellectual functioning. The regulations require that both components must be present to be eligible for Department services. (Testimony Dr. Patricia Shook)

30. An individual, who is tested for IQ using one of any of the professionally recognized and approved cognitive testing instruments, cannot score out of the range of Mental Retardation if he or she does not have the capacity to do so. A person must give the proper information or perform the requested task in order to obtain the IQ score, and a

person cannot give information that he or she does not know. In contrast, a person can score lower for a variety of reasons for example: psychiatric difficulties, attention difficulties, fatigue, environmental distractions, poor motivation, poor rapport with the examiner, problems with medication, and any other situation that would impact on the person's ability to perform. (Testimony, Dr. Patricia Shook)

31. In assessing the Appellant's application for DDS adult services, Dr. Shook used the Department's regulatory requirements and assessed eligibility using the cognitive test results in evidence. After reviewing all the documents submitted by the Appellant in support of eligibility, Dr Shook found that the Appellant's IQ scores were consistently above the level required for a finding of eligibility and determined that the Appellant did not meet the Regulatory requirements for Adult Service eligibility. (Testimony, Dr. Patricia Shook)

32. Dr. Patricia Shook testified that after hearing all the evidence presented at the Fair Hearing, she had not changed her opinion that the Appellant is ineligible for DDS Adult Services. Dr. Shook acknowledged that the Appellant does have deficits but stated that in her clinical opinion the Appellant does not meet the criteria for service eligibility from the Department. (Testimony Dr. Patricia Shook)

RECOMMENDED DECISION:

After a thorough review of all of the evidence, I find that the Appellant has not shown by a preponderance of the evidence that she meets the DDS eligibility criteria. I find that the weight of the evidence shows that the Appellant does not meet the Department's definition of Mental Retardation and therefore is not mentally retarded as that term is used in statute and regulation for the determination of DDS supports as defined in 115 CMR 2.01. My reasons are as follows:

REGULATORY REQUIREMENTS:

Massachusetts General Law c. 123B, section 1, defines a mentally retarded person as "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." In accordance with statutory and regulatory authority, the Department has promulgated regulations both defining Mental Retardation (Exhibit #2) and setting regulatory standards by which an individual may be determined eligible for DDS services (Exhibit #3).

In order to be eligible for DDS supports, an individual who is 18 year of age or older must meet the criteria for general eligibility requirements set forth at 115 CMR 6.04 & the definitions set forth at 115 CMR 2.01 as follows:

The General Eligibility requirements for services from the Department of Developmental Services (DDS) are found in 115 CMR 6.04 where it states the following:

> "persons who are 18 years of age or older are eligible for supports provided, purchased, or arranged by the Department if the person:

a) Is domiciled in the Commonwealth; and
b) Is a person with Mental Retardation as defined in 115 CMR 2.01"

The Department's definition of "Mental Retardation" found in 115 CMR 2.01 with its incorporated definition of "significantly sub-average intellectual functioning" and "significant limitations in adaptive functioning" is stated as follows:

> "Mental retardation means significantly sub-average intellectual functioning existing concurrently and related to significant limitations in adaptive functioning. Mental retardation manifests before age 18."

The Department's definition of "significantly sub-average intellectual functioning" found in 115 CMR 2.01 is stated as follows:

> "...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."

And, the Department's definition of "significant limitation in adaptive functioning" found in 115 CMR 2.01 requires a test score of 70 to meet the requirement of two standard deviations below the mean or a test score of 77 to meet the requirement 1.5 standard deviations below the mean, and is stated as follows:

> "...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."

CONCLUSIONS:

- The Appellant's domicile is questionable. She is currently residing outside the Commonwealth of Massachusetts [redacted] and has been living [redacted] for approximately five months. Further assessment and documentation as to the Appellant's intent would be necessary to determine if the domicile requirement is met in this case.

- The finding of Mental Retardation has not ever been diagnosed for the Appellant. While she has experienced [redacted] at age thirteen, her cognitive limitations are not at the level that is necessary for a diagnosis of Mental Retardation as that term is used and defined by the Department of Developmental Services.

- There are several components that must be met for a diagnosis of Mental Retardation by the Department:

1. The onset of Mental Retardation must occur during the developmental period.
2. The diagnosis of Mental Retardation must be determined by qualified psychologists using valid and comprehensive IQ tests that are administered properly in accordance with professional standards.
3. The valid and comprehensive IQ tests must established a diagnosis of Mental Retardation by a Full Scale IQ (FSIQ) of 70 (the level of Mild Mental Retardation) or below.
4. Significant limitations in adaptive functioning related to Mental Retardation must be present and established by valid tests administered in accordance with Department standards.
5. A determination must be made by qualified psychologists that cognitive or adaptive behavior deficits are not due to psychiatric illness or other causes unrelated to Mental Retardation.

- The qualifications of the professionals who conducted the cognitive tests in evidence are not in question, and the IQ testing instruments used were valid tests, administered properly in accordance with professional standards. The time of onset within the developmental period is also not an issue in this appeal.

- In addition, the presence of significant limitations in adaptive functioning is not in question as the Department has acknowledged that the Appellant has limitations in adaptive functioning; the Appellant's adaptive functioning test score from the Vineland II survey report resulted in an overall Adaptive Behavior Composite Score of 41, a score within the regulatory criteria for DDS eligibility. (DDS Exhibit #4)

- The question before us is the level of the Appellant's cognitive deficit, specifically if the Appellant is diagnosed with Mild Mental Retardation which must be established by FSIQ at or below 70 that is not the result of psychiatric illness or other causes unrelated to Mental Retardation.

The following cognitive assessments are in evidence:

EXHIBIT	AGE	DATE	TEST	FULL SCALE IQ	INDEX IQ Scores
DDS# 10	13 yrs [redacted]	[redacted] 2000	TONI-2	Quotient 94	(Average Range of IQ)
DDS# 12	18 yrs [redacted]	[redacted] 2005	WAIS-III	NOT Calculated	VIQ 87, P-IQ 102
DDS# 13	22 yrs [redacted]	[redacted] 2009	WAIS-III	Full Scale 78	VIQ 61, PIQ 106

- The first cognitive testing conducted at the Appellant's age of thirteen years, [redacted] using a TONI-2 (DDS Exhibit #10) indicates that the Appellant was able to score within the normal range of intelligence shortly after [redacted].

- The second cognitive testing in evidence was conducted at the Appellant's age of eighteen years, [redacted] using a WAIS-III and resulted in a Verbal IQ of 87 and a Performance IQ of 102, both significantly above 70, the score that would indicate possible sub-average intelligence. Although a Full Scale Score was not calculated for this evaluation, these results are not scores that would indicate the presence of Mental Retardation. (DDS Exhibit #12)

- The third cognitive testing in evidence which was conducted at the Appellant's age of twenty-two years, [redacted] resulted in a Full Scale Score of 78, well above that level

needed for a diagnosis of Mental Retardation. (DDS Exhibit #13).

- None of the qualified clinicians who administered cognitive testing on the Appellant have diagnosed Mental Retardation and Dr. Shook, who is also qualified to make a determination regarding a diagnosis of Mental Retardation, has concurred that the Appellant is not Mentally Retarded.

- The Appellant's scores of above 70 on all of her cognitive assessments would not be possible if she did not have the cognitive capacity to do so.

- After considering all the evidence in this matter, I found that the Department's finding that the Appellant's overall cognitive functioning falls above the level of cognition necessary for a diagnosis of Mental Retardation, to be a correct assessment of the Appellant's cognitive capability.

In summary, upon a comprehensive review of the oral testimony and documentary evidence submitted in this matter, I find that the preponderance of the evidence supports the Department's finding that the Appellant's overall cognitive ability falls above the range required for eligibility of DDS services. The Appellant's difficulties with adaptive functioning, while indicating that the Appellant is functioning at a lower level, is not verification of the presence of Mental Retardation. The Department eligibility regulations require that a finding of DDS eligibility cannot be made without an overall cognitive ability in the range indicated by a valid FSIQ score of 70 or below. In addition, the question of domicile has not been clearly addressed in this matter. As the Appellant has not met the burden of proof in this matter, I cannot, and do not find for the Appellant. I further find that the evidence presented by DDS supports a finding that DDS followed established standards and procedures in considering the Appellant's eligibility. Therefore, DDS's determination of ineligibly is upheld.

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 [115CMR 6.34(5)]

Date:_____

_____

Jeanne Adamo
Hearing Officer