

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

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

March 18, 2008

Mr. [REDACTED]
120 East Street
Methuen, MA 01844

Re: *Appeal of* [REDACTED] *Final Decision*

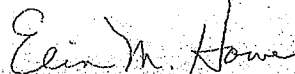
Dear [REDACTED]

Enclosed please find the recommended decision of the hearing officer in the above appeal. A fair hearing was held on the appeal of your daughter's 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 DMR 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
Elise Kopley, Assistant General Counsel
Patricia Shook, Psychologist
File

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of [REDACTED]

This decision is issued pursuant to the regulation of the Department of Mental Retardation (DMR or Department), (115CMR 6.30 – 6.34) and M.G.L. c. 30A. A fair hearing was held on March 7, 2008 at the Department of Mental Retardation's Hogan Regional Center in Hawthorne, Massachusetts.

Those present at the proceeding were:

Ms. [REDACTED]	Appellant
Mr. [REDACTED]	Father of the Appellant
Elise Kopley	Counsel for DMR
Patricia Shock Ph.D.	Eligibility Psychologist for DMR

The evidence consists of one document submitted by the Appellant, nine documents submitted by DMR, and approximately one and one-half hours of testimony. The documents submitted into evidence are as follows:

Appellant Exhibit #1-

Vocational Evaluation summary completed by Denise M. Michaud of Star Works, an American Training vocational program, dated February 27, 2008.

DMR Exhibit #1-

Curriculum Vitae of Patricia H. Shock, Ph. D.

DMR Exhibit #2-

Appellant's Application for DMR Eligibility dated February 1, 2007.

DMR Exhibit #3-

DMR's determination of ineligibility dated March 29, 2007.

DMR Exhibit #4-

Appellant's request for a Fair Hearing dated August 31, 2007.

DMR Exhibit #5-

DMR's Notice of Receipt of Fair Hearing request sent to Mr. & Mrs. Harrington, dated September 13, 2007.

DMR Exhibit #6-

DMR's Revised Notice of Receipt of Fair Hearing request sent to the Appellant dated September 24, 2007.

DMR Exhibit #7-

DMR's Fair Hearing Notice sent to the Appellant dated January 10, 2008.

DMR Exhibit #8-

Psychological Report conducted by Dr. Daniel R. Morocco using the Wechsler Adult Intelligence Scale- III and the Vineland II, dated March 2, 2007.

DMR Exhibit #9-

Copy of a signed medical statement from Burlington Medical Associates, Inc. dated February 12, 2007.

ISSUE PRESENTED:

Whether the Appellant is eligible for DMR services by reason of mental retardation as defined in 115 CMR 6.04(1)

BACKGROUND:

The Appellant, [REDACTED], is a 34 year old female who resides with her father and step-mother. Ms. [REDACTED] has been diagnosed with Williams Syndrome, a genetic disorder. She attended special education classes and received a certificate of completion from high school.

Ms. [REDACTED] had not requested services from the Department prior to age 18. She applied for DMR adult services at age 33 and was found to be ineligible 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 August 31, 2007 where her ineligibility finding was upheld. Ms. [REDACTED] appealed that decision and pursuant to DMR regulations a fair hearing was scheduled and held on March 7, 2008. The Appellant appointed her father, Herbert Steiner, as her authorized representative at this hearing.

SUMMARY OF OPENING STATEMENTS:

APPELLANT'S OPENING STATEMENT:

Mr. [REDACTED] did not wish to make an opening statement other than to state that his daughter needed help, was not normal, and that she has problems because she was born with William's Syndrome. He was concerned about what would happen to [REDACTED] after he dies. Mr. [REDACTED] also stated that he had attempted to obtain the services of the Disability Law Center but they would not help him, and he therefore had to represent his daughter without the help of a lawyer.

DMR'S OPENING STATEMENT:

Attorney Elise Kopley stated that DMR was here today in response to [REDACTED] application for DMR services. The issue is that [REDACTED] does not meet the criteria for DMR's definition of a person with mental retardation. Ms. Kopley stated that she will show through evidence presented that the Department is correct in their assertion and that the Department's decision regarding ineligibility should be upheld.

SUMMARY OF THE EVIDENCE PRESENTED:

- o An evaluation of the Appellant's work performance at the American Training Star Works program (Appellant Exhibit #1) indicates that Ms. [REDACTED] is able to do most of the jobs given to her, but her production is well below competitive level. It states an opinion that [REDACTED] will be able to obtain, learn, and keep a job if allowed some accommodation for her lack of speed while working.
- o Testimony by Ms. [REDACTED] revealed that she worked 5 days a week at the American Training Star Program and she enjoyed working there.

- Mr. [REDACTED] testified that [REDACTED] was living with him and his wife but they were trying to do everything possible to get [REDACTED] a place of her own. He stated that she needs help from somebody because she really can not do most things as well as needed, for example, she can not wash dishes properly. He stated that she can only cook three meals, that she did not know how to cook anything other than those three meals. He further stated that [REDACTED] gets frustrated, on occasion has thrown objects and that Mr. [REDACTED] wife gets upset with [REDACTED].
- Mr. [REDACTED] testified that he had no other evidence to present other to state that [REDACTED] was born with Williams Syndrome and she is "not right".
- Motion to Dismiss was presented by Attorney Elise Kopley due to the lack of evidence presented by the appellant. Motion was denied.
- Dr. Patricia Shook testified as an expert witness; she testified as to the Appellant's request for services (DMR Exhibit #2), the Department's denial of eligibility (Exhibit #3), and the Appellant's request for a Fair Hearing (DMR Exhibits #4, #5, #6 & #7).
- The Department allowed a wavier of the 30 day time limit to initiate an appeal; extenuating circumstances were recognized and the Department therefore did not dispute the Appellant's right to appeal beyond the required timelines.
- Dr. Shook testified that at the time the Appellant applied for DMR services, the Appellant did not have any psychological assessments for the eligibility team to consider. DMR supplied Mr. [REDACTED] with a list of professionals who are qualified to conduct such tests and the Appellant subsequently was evaluated by Daniel R. Morocco, Ed.D., P.C. on March 2, 2007. (DMR Exhibit # 8)
- Dr. Shook testified that in order to be eligible for DMR services, a person must meet DMR's definition of mental retardation. That definition requires a person to be domiciled in Massachusetts, to have significantly sub-average intelligence which is indicated by a Full Scale IQ score of 70 or below, to have significant limitation in adaptive functioning, and to have become mentally retarded during the developmental stage which is before age 18.
- Dr. Shook testified that since DMR's definition of mental retardation requires that a person must have mental retardation during the developmental period before the age of 18, she looks for psychometric assessments conducted prior to age 18. The existence of mental deficiency after age 18 is not an indication that mental retardation existed prior to age 18 as there are many factors that can cause mental deficiency at an older age, for example, a head injury that occurred after age 18 or dementia in the elderly. Dr. Shook stated that any testing performed after age 18 is retrospective at best, and must be viewed with caution because there may be many reasons for the results that are independent from a developmental disability.
- Dr. Daniel R. Morocco conducted a Wechsler Adult Intelligence Scale-III (WAIS-III), a Vineland II (completed by the Father) and a Psycho Diagnostic Interview on March 2, 2007. The report indicates that Ruth Steiner responded well to praise and positive reinforcement, did not appear to become overwhelmed or defeated by her failures and generally seemed to enjoy her successes. Dr. Morocco's report further

states that the information obtained reflected a reasonable appraisal of Ms. [REDACTED] current functioning.

- The results of the WAIS-III conducted by Dr. Morocco on 3/2/07 are as follows:

Verbal IQ score	79
Performance IQ score	69
Full Scale IQ score	72

- Dr. Shook testified that the one psychometric test available (WAIS-III) which was conducted by Dr. Morocco on 3/2/07 resulted in scores inconsistent with a finding of sub-average intellectual functioning as required by DMR's definition of mental retardation. A Verbal IQ score of 79, a Performance IQ score of 69, and a Full Scale IQ of 72 place Ms. [REDACTED] in the low-average range of intellectual functioning and do not meet the DMR's criteria of 70 or below. Dr. Shook further testified that her assessment of the sub scores listed in Dr. Morocco's test also indicate that the Appellant does not meet the criteria of significantly sub-average intellectual functioning as required by DMR regulations.
- Dr. Shook testified that Ms. Steiner's IQ scores are more indicative of a person with a learning disability. She testified that the scores are consistent with what can often be seen in persons with Williams Syndrome and that Williams Syndrome is separate and distinct from mental retardation. Dr. Shook stated that a person with Williams Syndrome can not be diagnosed with mental retardation as it is defined by DMR's regulations simply by virtue of the diagnosis of Williams Syndrome. She stated that [REDACTED] overall test scores are not representative of a person with mental retardation as defined by DMR.
- Dr. Shook testified that she did not consider DMR's additional requirement of a significant limitation in adaptive functioning which is also needed to meet DMR's definition of mental retardation. DMR regulation requires that a significant limitation in adaptive functioning must be related to and exists concurrently with a significantly sub-average intellectual functioning. In making her determination regarding the Appellant's eligibility, Dr. Shook did not consider whether the Appellant had significant limitation in adaptive functioning because she had already determined that Ms. Steiner did not have significantly sub-average intellectual functioning. Dr. Shook stated that she considered it irrelevant because even if Ms. Steiner's adaptive functioning is limited, it could not be related to and exist concurrently with significantly sub-average intellectual functioning.

FINDINGS AND CONCLUSIONS:

After a careful review of all of the evidence, 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 year of age or older must meet the criteria set forth at 115 CMR 6.04 & 2.01.

The General Eligibility requirements for services from the Department of Mental Retardation (DMR) 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."

115 CMR 2.01 further defines "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."

And, 115 CMR 2.01 defines "significant limitation in adaptive functioning" as:

"... 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."

Thus in order to be eligible for DMR supports an individual who is 18 years of age or older must meet the following criteria:

1. must be domiciled in the Commonwealth
2. must have been diagnosed with significantly sub-average intellectual functioning as defined by 115 CMR 2.01
3. must in addition to the significant sub-average intellectual functioning, have been diagnosed with related significant limitations in adaptive functioning as defined by 115 CMR 2.01
4. must have, before age 18, exhibited both the significant sub-average intellectual functioning and related significant limitations in adaptive functioning referenced above that together define mental retardation pursuant to 115 CMR 2.01.

There is no dispute that the Appellant meets the first criteria and I specifically find that she

meets the requirement of domicile. However, I find that the Appellant does not meet the second, third and fourth criteria listed above and is not mentally retarded as that term is used in statute and regulation for the determination of DMR supports as defined in 115 CMR 2.01. My finding is made in view of the following facts:

1. The Appellant's Full Scale IQ score is reported above 70, at a value of 72, and the expert witness, Dr. Shook, testified that a Verbal IQ score of 79 and a Performance IQ score of 69 more likely represented a person with a learning disorder rather than a person with mental retardation.
2. The Appellant did not produce evidence of related significant adaptive limitations. This limitation would need to indicate overall composite adaptive functioning limitation of two standard deviations below the mean or adaptive functioning limitations in two out of three domains at 1.5 standard deviations below the mean as required in 115 CMR 2.01.
3. And lastly, the appellant failed to show that a significant sub-average intellectual functioning along with a related significant limitation in adaptive functioning was present before age 18.

I further find that the evidence presented by DMR supports a finding that DMR followed established standards and procedures in considering the Appellant's eligibility. Therefore, DMR's determination of ineligibility 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: March 13, 2008

Jeanne Adamo
Jeanne Adamo
Hearing Officer