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

April 28, 2008

Alfred A. Gray, Jr., Esq.
Bowditch & Dewey, LLP
One International Place, 44th Floor
Boston, MA 02110

Re: Appeal of [redacted] Final Decision

Dear Attorney Gray:

Enclosed please find the recommended decision of the hearing officer in the above appeal. A fair hearing was held on the appeal of your client'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
Kim LaDue, Assistant General Counsel
Veronica Wolfe, Regional Eligibility Manager
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. 30 A. A fair hearing was held on March 28, 2008 at the Department of Mental Retardation's Hogan Regional Center in Hawthorne, Massachusetts.

Those present at the proceeding were:

[redacted]	Appellant
[redacted]	Father of the Appellant
[redacted]	Mother of the Appellant
Alfred A Gray, Esq.	Counsel for the Appellant
Kim La Due, Esq.	Counsel for DMR
Patricia Shook Ph.D.	Eligibility Psychologist for DMR

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

Appellant Exhibit #1
Two letters from Woods Schools dated May 5, 1966.

Appellant Exhibit #2
A letter from Woods Schools dated May 12, 1966

Appellant Exhibit #3
Neurological Evaluation by Eugene R. Tompkins, Jr., M.D. at Mass General Hospital dated August 29, 1974

Appellant Exhibit #4
Educational Plan at the Lexington Public Schools dated November 6, 1974

Appellant Exhibit #5
Developmental Evaluation at the Children's Hospital Development Center, Boston, Massachusetts, dated September 21 through September 23, 1977.

Appellant Exhibit #6
Letter from Board Certified Psychiatrist, Quinn Rosefsky, M.D. dated July 12, 1984.

Appellant Exhibit #7
CMARC Evaluation Unit Report dated December 3, 1984

Appellant Exhibit #8
Initial Psychiatric Evaluation by Andrea Seek, M.D. dated January 3, 1995

Appellant Exhibit #9
Neuropsychological Evaluation by Licensed Psychologist Maureen Rubano, Ph.D. dated March 13, 1995

Appellant Exhibit #10
Neuropsychological Evaluation by Sean Hyde O'Brien, Psy.D and Licensed Psychologist Karen Conti Lindem, Ph.D. at the Learning Lab at Leslie University, dated July 23 and July 27, 2007.

Appellant Exhibit #11
A letter from Woods Services dated September 25, 2007
Appellant Exhibit #12
A letter from the Lexington Public Schools dated October 1, 2007
Appellant Exhibit #13
A letter from Woods Schools dated June 5, 1967
Appellant Exhibit #14
Handwritten notes taken by Mr. [redacted] dated June 2, 1965
Appellant Exhibit #15
Handwritten notes taken by Mr. [redacted] dated May 26, 1969
Appellant Exhibit #16
Handwritten notes taken by Mr. [redacted] dated November 30, 1970
Appellant Exhibit #17
Copy of a section of DSM-IV-TR 4th edition 2000 re: the Diagnostic Features of Mental Retardation.
Appellant Exhibit #18
Adaptive Behavior Assessment System- Second Edition (ABAS-II) dated June 6, 2007.

DMR Exhibit #1
Curriculum Vitae of Patricia H. Shook, Ph. D.
DMR Exhibit #2
DMR's determination of ineligibility dated June 26, 2007
DMR Exhibit #3
.DMR's letter of denial of eligibility dated July 12, 2007
DMR Exhibit #4
Psychological testing at Children's Hospital dated February 27, 1986.
DMR Exhibit #5
Neuropsychological Evaluation report with March 13, 1995 date of testing
DMR Exhibit #6
Neuropsychological Evaluation report with July 23 & 27, 2007 testing dates

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 49 year old male who resides with his elderly parents, his father, Mr. [redacted] age 83, and his mother, Mrs. [redacted] age 79. [redacted] was diagnosed as a child with Chronic Brain Syndrome with Mental Retardation and subsequent diagnoses have included Autism as a primary finding. At approximately age 5, [redacted] was placed in a residential facility, the Woods School in Langhorne, Pennsylvania, where he received special education and therapy services for a period of approximately 9 years. [redacted] returned to live with his family at about age 14 and continues to reside with his parents today. He attended special education classes at L.A.B.B., a collaborative program given at the Lexington Public High School, in Lexington, Massachusetts, until, when at age

27 he received a certificate of accomplishment from this program. [redacted] family has worked with the Massachusetts Rehabilitation Commission to prepare [redacted] for employment. [redacted] past employment includes a series of on-site and off-site positions through the Community Workshop in Boston, and work as a laundry attendant and mailroom clerk. [redacted] is currently unemployed; he is participating in a sheltered workshop program with Work Inc.

[redacted] had not requested services from the Department prior to age 18. He applied for DMR adult services at age 49 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 September 19, 2007 where his ineligibility finding was upheld. [redacted] appealed that decision and pursuant to DMR regulations a fair hearing was scheduled and held on March 28, 2008. The Appellant appointed his attorney, Mr. Alfred A. Gray, as his authorized representative at this hearing.

SUMMARY OF OPENING STATEMENTS:

APPELLANT's OPENING STATEMENT:

Attorney Alfred Gray stated that we are here today with regard to the eligibility of [redacted] for services with the Department of Mental Retardation; [redacted] has applied for services and has been denied. The primary issue in dispute is whether there is sufficient documentation to indicate that [redacted]'s IQ score or cognitive abilities were within the parameters of the DMR regulations, DMR said regulations looking for an individual to have an IQ score of 70 or under during the developmental years. Attorney Gray pointed out that [redacted] is now 49 years old and the developmental period in questions would be for the most part in the 1960s. Unfortunately, little documentation of evaluations that were conducted during this time is available now.

Attorney Gray stated that we would hear evidence from [redacted] stating that copies of evaluations were not available or not provided to him; therefore [redacted] has recreated what has taken place using other documents and his own notes taken over the years as he attended meetings and met with professional staff regarding his son's progress. These documents have descriptions of [redacted] behaviors and references to diagnoses; attorney Gray offered that taken together these documents will lead to a conclusion that [redacted] is eligible. Attorney Gray conceded that much of what is presented is not official evaluations; official evaluations do not exist. However, there are references to IQ scores during the developmental period.

Later in life IQ scores did fluctuate some under and some over the IQ number of 70 as is the case with the March 13, 1995 IQ score of 73. Attorney Gray offers that the March 13, 1995 evaluation which is outside the developmental stage contains discrepancies in the Verbal and Performance Skills; he proposes that using this score as the primary document is misleading by the evaluator's own words. Attorney Gray concluded by requesting consideration of all the documents provided today for the determination of

eligibility.

DMR's OPENING STATEMENT:

Attorney Kim La Due stated that the issue is whether the department is correct in its decision to find [redacted] ineligible due to his not meeting the criteria of a person with Mental Retardation. Attorney La Due 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:

- Mr. [redacted] testified for approximately 3 hours about his son's diagnostic history as a person with Mental Retardation; specifically the circumstances that lead him to believe that [redacted] should be eligible for services from the Department of Mental Retardation. The following testimony was given by [redacted]:
  - Children's Hospital of Philadelphia diagnosed [redacted] with "Primary Retardation with Emotional Involvement" at approximately age 3 to 4 years when, his pediatrician, Dr. Harrington, recommended an evaluation at the Children's Hospital Philadelphia.
  - [redacted] was then referred to the Institute of Philadelphia Hospital for treatment. He participated in a treatment program for 2-3 hours a week at this institution until May 1962 when they concluded that [redacted] had "Chronic Brain Syndrome with Mental Retardation and Emotional Disturbance"; they recommended placement in a residential treatment center.
  - [redacted] attended a summer camp for Retarded Children in 1963.
  - [redacted] was placed in a residential school, the Wood's School, which was a residential school for retarded children, from 1963 to August of 1972 while he was approximately ages 5 through age 14
  - [redacted] returned home in 1972 because it became possible for [redacted] to attend public school in the community due to a change in the law requiring schools to educate handicapped children in the community. [redacted] attended the L.A.B.B. Collaborative program at the Lexington High School until age 27.
  - [redacted] was not employable at age 27. However, he was able to use public transportation, and through Massachusetts Rehab he was placed in a sheltered workshop at Community Work Shop from approximately 1986 to 1997. From approximately 1997 to 2002 he worked in a supportive work situation for a hotel and in 2006 until January of 2008 worked in the mail room at a governmental agency. [redacted] is now back at a sheltered workshop.
  - Mr. [redacted] was able to find some documentation on the Wood's school letter head that referenced testing, but noted that he had this documentation only because, at that time, he was asking for information for insurance purposes. Appellant Exhibits # 1 & 2 entered into evidence. [redacted] stated that in the past, before the laws regarding the right to get information changed, parents were not given access to medical evaluations and therefore he was not given written reports; information was communicated to him only through verbal reports.

- Appellant Exhibit #1 shows that [redacted] was tested at the Woods Schools with a Stanford Benet at about age 5 that placed him at a 2 year, 11 month age level. The document also states that [redacted] was extremely difficult to test.
- Appellant Exhibit #2 shows that [redacted] was tested at the age of 6 years 11 months at the Woods Schools on the Gesell Developmental Schedules. This test result was reported to place him at a developmental age of 30 months with a Developmental Quotient of 36. He was also tested on the Merrill-Palmer Scale of Mental Tests where his mental age was reported at 4 years, three months and his IQ at 61.
- Appellant Exhibit #3, is a neurological evaluation presented into evidence as an example of the difficultly of accessing medical information at that point in time. Mr. [redacted] stated that it was not possible for parents to obtain written results of evaluations sent directly to them; medical reports were sent from doctor to doctor as evidence by this evaluation by Dr. Thompson addressed to [redacted] pediatrician, Dr. White. It was presented as a general assessment of [redacted] s issues at age 16 years. He was attending the Lexington Program at that time.
- Appellant Exhibit #4 was presented into evidence as an Education Plan from the Lexington Public Schools when [redacted] was 16 years old. There is reference that [redacted] is functioning in the mildly retarded or educable range of intellectual ability and speaks of him as having the limitations one should expect in the case of retardation.
- Appellant Exhibit #5 was presented into evidence as an evaluation conducted by Children's Hospital Medical Center at the request of a teacher in the Lexington School System. There is no IQ score in this document but there is reference to [redacted] 's social interaction skills, which was a particular concern then and according to Mr. [redacted] is still a concern of his.
- Appellant Exhibit #6 was presented into evidence as a letter from [redacted] Psychiatrist, Dr. Rosefsky, who had been treating [redacted] from 1977 through 1983 for a total of approximately 6 years. Treatment consisted of one session per week during the first 5 years and one session per month during the final year of treatment. Dr. Rosefsky wrote this statement at the request of Mr. [redacted] who was applying for some form of service and needed a professional statement, thus it is addressed "To whom it may concern". The letter states a diagnosis of infantile autism now in an attenuated form.
- Appellant Exhibit #7 was presented into evidence as an evaluation report from CMARC (Central Middlesex Association for Retarded Citizens)- conducted to determine [redacted] s employability.
- Appellant Exhibit #8 was presented into evidence as a Psychiatric Evaluation conducted in January of 1995 by Dr. Seek, who is a psychiatrist at the Lahey Clinic. Page two of the report references a Full Scale IQ score of 60-70 (not an IQ testing that was conducted by Dr. Seek but information that Mr. [redacted] gave to Dr. Seek at that time). Mr. [redacted] stated that he could not recall where he would have gotten those IQ numbers from but he did report them to Dr. Seek in 1995.
- Appellant Exhibit #9 was presented into evidence as a Neuropsychological Evaluation conducted on March 13, 1995 by Dr. Rubano, PhD. Licensed Psychologist from the Neuropsychiatry Referral Center. This evaluation came about as a referral by Dr. Seek and was conducted at the appellant's

chronological age of 36 years. The testing was done by Dr. Rubano and references an IQ score ranging from 73 to 83. [redacted] stated that there were concerns about the IQ score and to explain, [redacted] quoted the following from the report: "because of the extreme inter test scatter in both the Verbal and Performance scales, the summary scores are not representative of the patient's abilities in most areas" and further down in the report, " As noted above, this admixture of average abilities in some areas and below average abilities in others means that the "summary" scores are not representative of most of the patient's abilities". Mr. [redacted] then quoted from the summary statement of the report where it states "on cognitive testing, the patient demonstrates very great discrepancies between average abilities in some areas and profoundly impaired abilities in other areas."

- Appellant Exhibit #10 was presented into evidence. [redacted] testified that this evaluation, dated July 2007, was conducted because Mr. & Mrs. [redacted] felt that the reliance on the March 1995 test was a reliance on a faulty test and they wanted a very thorough evaluation for DMR to consider. Mr. [redacted] testified that the new report is a 24 page evaluation that included many other types of tests and measures beyond the Wechsler tests. Mr. [redacted] read page 15 of the report which gives a diagnostic impression stating "Based on these findings, [redacted] appears to display a pattern of significantly limited cognitive and adaptive functioning skills that have been noted since childhood and are consistent with DSM-IV criteria for the diagnosis of Mild Mental Retardation"
- Mr. [redacted] stated that these were all of the formal evaluations that he has on his son and restated that any attempt to get a written evaluation in the past was unsuccessful. He stated that he recently sent a letter to the Woods Schools (which are now called Woods Services) to ask for any reports they have on file and received a response stating that the records have been destroyed. Appellant Exhibit # 11 entered into evidence. Mr. [redacted] noted that the Woods Schools response to the request for information listed a diagnosis of mental retardation for [redacted] and confirmation that [redacted] attended the Woods Schools from 1963-1972 .
- Mr. [redacted] stated that he also recently sent a letter to the Lexington Public Schools to ask for any reports they have on file and received a response from them stating that any record would have been destroyed. Appellant Exhibit #12 entered into evidence.
- Appellant Exhibit # 13 was entered into evidence. Mr. [redacted] testified that this letter was sent as a cc to Mrs. [redacted] confirming her request to send copies of evaluations done at the Woods Schools to [redacted] psychiatrist, Dr. Norman Paul. The letter lists four separate Psychological Evaluations that were conducted at the Woods School and specifically states that the information is "for professional use only"; copies of the evaluations were not included in the copy sent to [redacted] This exhibit was offered as proof that Psychological Evaluations were conducted at the appellant's age of 5 years, 6 years, 7 years and 8 years at the Woods school and that written copies could not be obtained by [redacted] parents.
- Appellant Exhibit # 14 was entered into evidence. Mr. [redacted] testified that this exhibit was a copy of some of the many notes that he kept over the years whenever he received information regarding his son and especially at

conferences that were held twice yearly at the Wood's School. Among other information, it lists an IQ score of 30 months, reported by the Psychologist at a June 2, 1965 meeting.

- Appellant Exhibit #15 was entered into evidence. Mr. testified that this exhibit is also a copy of notes taken by Mr. at this time at a parent conference on May 26, 1969 when was approximately 11 years old. Page two lists testing by the Wechsler Pre School (WPPSI) as 4 year verbal IQ 40 and a 6 ½ yr performance IQ of 65.
- Appellant Exhibit # 16 was entered into evidence. Mr. testified that this is a copy of notes taken by him at a November 30, 1970 parent conference when was approximately 12 years old. Page two of these notes state that "this is the first time that has been testable" and the he got an "overall score of 57 and social skill score of 30". Mr. reported that it was a psychological testing report that was read by the social worker at this meeting.
- Attorney Gray offered to have the entirety of Mr. 's notes made available for DMR's review; DMR declined the offer stating it would not be necessary.
- Mr. testified that has obsessions with various things and those obsessions change from year to year. He reported that has been diagnosed as a "savant" and as such he has some extraordinary capabilities with numbers, schedules, and such. He was able to do calculations with numbers in his head for a while but has lost interest in doing that. However, although has an extraordinary ability with numbers and memory, he cannot communicate other than the most basic needs; Mr. stated that is incapable of communicating other things.

- On Cross Exam by Attorney Kim La Due, Mr. responded as follows:
  - Attorney Kim La Due recalled that Mr. had mentioned earlier that Arithmetic skills aren't what they used to be; she asked if he put a specific reason to this decline or was the decline a result of the normal decline that is expected by all of us with time. Mr. esponded that people's savant skills change, that over time they just go away. He stated that there is no explanation as to why they can do what they can do and no explanation as to why it goes. He stated that did calendar calculations; he memorized the calendars and he could tell you what day of the week you were born on.
  - Attorney Kim La Due asked if had always taken public transportation. Mr. tated that memorizes schedules and road maps; he will never get lost. He stated that has some great strengths in a few areas and enormous deficits in other areas.
  - Attorney Kim La Due questioned Mr. as to what does in the sheltered workshop now and how many hours he worked. Mr. turned to nd repeated the question to responded by stating "makes nails". When 's mother offered correction by asking if he made nails or packaged nails, responded by stating "package nails". When was asked how many hours he worked at the sheltered workshop he stated "6 hours- 7 hours – 5 ½ hours".

- Dr. Patricia Shook testified as an expert witness for the Department; the following represents a summary of Dr. Shook's testimony:
  - DMR Exhibit #1 was entered into evidence as Dr. Patricia Shook's CV documenting her advanced degrees, extensive experience and standing in the field of psychology and in particular the field of Mental Retardation. Dr Shook has been with DMR for approximately 2 ½ years as the eligibility psychologist where she is responsible for making determinations for eligibility. She is knowledgeable in cognitive growth both through education and experience and also knowledgeable in DMR regulations pertaining to eligibility.
  - 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 gave an overview of the eligibility process stating that that her primary responsibility at the Department of Mental Retardation entails eligibility determinations where DMR Eligibility Specialists go out to the field to collect information from families and present a completed packet of information to her. She then makes a determination as to whether or not the person meets DMR's criteria for services based on the papers before her. The information that is gathered includes all IQ tests and medical reports that are available, and an Adaptive Behavior Assessment (ABAS II) completed by a person who knows the appellant very well, usually a family member. Cognitive testing during the adolescent years is required to get an IQ for the person along with testing of adaptive behavior; if no cognitive testing is available during that period, the person is referred to a qualified practitioner to obtain an accepted cognitive evaluation.
  - Dr. Shook explained that it is critical to gather valid test results in order to determine the IQ of an applicant; to be valid the cognitive testing must be one of many tests that are recognized by the field and the tester must be qualified to conduct and report the results of the cognitive testing. Dr. Shook stated that experienced reporters (testers) are necessary in order to determine if an IQ score is valid; an experienced reporter will note observations as to any influence effecting the testing process, for example if the person responded adequately, and if the test indicates a valid interpretation of the person's ability. Dr. Shook stated that this is critical because without it (the qualified reporter's observations regarding behavior), you do not know what is going on (do not know if the IQ number reported is truly indicative of the person's cognitive functioning). For example if the person was not focusing during the test, the scores would be lower than the person's true capacity and the report would not be a valid interpretation of cognitive abilities.
  - Dr. Shook testified that she has reviewed _____'s file and found him to be ineligible. DMR Exhibit #2 and #3 were presented into evidence. She stated that she did not have all of the reports at the time she found him to be ineligible for services and that additional testing was presented just prior to and at the informal conference. However, the new information did not change her finding of ineligibility.

- Dr. Shook testified about the evaluations that have been reviewed to date, and spoke about the cognitive test tools used in those evaluations, the WAIS-R and the WAIS-III stating that they are the most common tests used for testing IQ and cognitive functioning. She stated that the WAIS is highly regarded for reliability and validity. Dr. Shook explained that when speaking of a valid test, essentially it means that the test measures what it is suppose to measure; a valid test allows you to make interpretations from the test scores. It also refers to the appropriateness of the decisions that you can make from the test scores; you need a valid test to do that. Reliability refers in general to the stability and consistency and accuracy of the test score across situations in time and both are very important in administrating and interpreting psychometric test results. Dr. Shook stated that for a test result to meet the standard of reliability and validity, you 1st need a test that is reliable and valid & the Wechsler is both reliable and valid, and 2nd you need to have an administration of the test that is also valid, that is to say that the person administering it is qualified so that it has been administered and reported according to the standardized format, according to how the test is suppose to be administered and reported, and 3rd , that the person being tested has been able to participate adequately in the test so that you have gotten the best result to tap into their cognitive ability at that time. A qualified tester will assess the person's participation and behavior and report them in the test results
- DMR Exhibit #4 was presented into evidence as a 1986 report done at Children's Hospital when the appellant participated as a control subject in a study of Fragile-X Syndrome and DMR Exhibit #5 was presented into evidence as a Neuropsychological evaluation conducted when the appellant was requesting services from Mass Rehab. Dr. Shook discussed the results of each; she spoke about the scaled scores and the scatter (discrepancy) in the subtest scores. Dr. Shook stated her opinion that there is scatter present in both and that they do not present a picture of a person with mental retardation as it (mental retardation) is defined by DMR.
- Dr. Shook stated that if a person is diagnosed as autistic it does not follow that a person has mental retardation; autism has a significant overlap but not all people with autism have mental retardation. She testified that she looked at testing done when [redacted] was 27, 36, and 49, in his post developmental period since no valid and reliable testing results were available from his developmental period. She stated that when doing so she must look at the test and project back to reflect back to the end of the developmental period. Such tests cannot be definitive but are accepted as a method to conduct a retrospective look. The closer to the developmental period the better the chance that it reflects what the person cognitive ability was during that time.
- Dr. Shook stated that DMR Exhibit #4 is an evaluation completed in 1986 by Children's Hospital at the appellant's age of 27; it is the closest test to the appellant's developmental period. The appellant was a control subject in a fragile X syndrome research project at that time. A WAIS-R was conducted and showed a Full Scale IQ Score of 76, a Verbal IQ score of 74, and a Performance IQ score of 85; scores that are beyond the definition of mental retardation and sub test results that are not typical of a person with mental retardation. Dr. Shook pointed out the great variability or "scatter" in sub

test scores with some high scores placing the appellant in the low- average range of cognition. Dr. Shook stated that scatter indicated that the person does not have evenly developed skills, and in this case the appellant has significant strengths and weaknesses. Dr. Shook testified that she received this report after she had made her determination of ineligibility, and it reinforced her opinion that the appellant is functioning in the borderline range of mental retardation, thus confirming her original finding that the appellant did not meet DMR's definition of mental retardation.

- Dr. Shook discussed DMR Exhibit #5 (which is the same document as Appellant Exhibit # 9) stating that it was a neuropsychological evaluation conducted by Dr. Rubano using the WAIS-R and was a report she (Dr. Shook) had reviewed when the appellant applied for services and was found to be ineligible. The WAIS-R was conducted in March of 1995 at the appellant's age of 36 with results reported in a range rather than a single score.

  Dr. Shook stated that reporting the results as a range allows for a measurement of error; it notifies the reader about a confidence interval that accounts for a measurement of error. Dr. Shook testified that there is always some test error, some low measurement of error on all tests. She stated that you will never get precisely the same score each time and a measurement of error is a way to figure the test's true scores.

  Dr. Shook stated that it is somewhat unusual to report results in this manner and theorized that Dr. Rubano did so because of the significant scatter that is present. Dr Rubano speaks of the scatter in her report and states that the summary scores are not representative of most of the patient's abilities. Dr. Shook explained that this statement by Dr. Rubano is meant to point out that there is a big difference in sub test scores; since the summary score is, generally speaking, somewhat of an aggregate of the person's various abilities, it will not be a good representation of abilities in each of the various sub areas tested.

  Dr. Shook agreed that the summary score which is usually seen as representing an average of the person's various abilities is (due to the scatter) not the best representation of the appellant's abilities in various sub areas, some being lower than the summary score would indicate and others being higher than the summary score would indicate. However, although this score is not the best representation of most of the appellant's abilities (in sub tested areas), there is no reason to doubt that the results are not representative of the appellant's IQ; Dr. Rubano's statement in no way invalidates the Full Scale IQ reported in the WAIS-R which remains a valid IQ score to determine mental retardation.

  Dr. Shook stated that the statement that is looked at to determine validity of the Full Scale IQ score is the statement that describes the reporter's assessment of cooperation along with the reporter's assessment as to whether the results are representative of the person's current best level of functioning. In this evaluation Dr. Rubano stated as follows: "Because of his excellent cooperation with the assessment, there is no reason to doubt that these results are representative of his current best level of functioning".

  Dr. Shook pointed out that the results of the WAIS-R, NI further corroborate her contention that the appellant is not significantly mentally retarded as that term is defined in DMR regulations. The report states that

the appellant was able to select the best synonym for such low-frequency words as "plagiarize, audacious and tirade" and that the appellant was able to read all the items and all of the foils without assistance. Dr. Shook stated that generally speaking this would not be indicative of a person with mental retardation as that term is used in DMR regulations, it would more likely describe a person with borderline range of intellectual functioning. Dr. Shook stated that the great scatter found in this report is also not typically seen in a person with mental retardation; it is more indicative of a person with a learning disability. Dr. Shook noted that the evaluator does not make a diagnosis anywhere of mental retardation.

- Dr. Shook discussed DMR Exhibit #6 (which is the same document as Appellant Exhibit #10) stating that it is a 2007 neuropsychological evaluation conducted at the appellant's age of 49 at the request of Mr. [redacted] It was a report that Dr. Shook received after her determination of ineligibility and it did not alter her decision. Dr. Shook testified that the evaluation was conducted when the appellant was older; the older you are the less reliable the result is to the developmental period. Because of the age of the appellant, this test has less relevance than the earlier testing. This test was conducted using the WAIS-III with IQ summary scores of Verbal IQ of 68, Performance IQ of 77, and a Full scale IQ of 70. Dr. Shook pointed to the 9 point difference between the verbal and performance IQ scores and stated that the scores are typical of a person with mental retardation but the discrepancy between the scores is not typical. In addition the sub test scores range from low to borderline with similar scatter that has been found in past testing.

  Dr. Shook testified that the examiner conducted a comprehensive evaluation and throughout the report the examiner talks about the presence of a fair amount of scatter. The examiner does give a diagnosis on page 15 of the report stating that based on these findings, [redacted] ppears to display a pattern of significantly limited cognitive and adaptive functioning skills that have been noted since childhood and are consistent with DSM-IV TR criteria for the diagnosis of Mild Mental Retardation (317.00) . Dr Shook testified that she did not agree with this diagnosis because the results of this test are at the appellant's age of 49 years; since according to DMR requirements mental retardation must manifest before age 18, she must look at results that are closest to the developmental stage, and the earlier testing show a higher cognitive functioning. In addition Dr. Shook stated that in her opinion the scatter in this test result is not consistent with mental retardation, that mental retardation typically manifests as a flatter IQ score profile.

  Dr. Shook stated that she has considered all the information regarding earlier testing. Although no actual reports are available for review from the developmental years, there is suggestion that the testing results that were reported during those years were not believed to be the true capacity of the appellant at that time. For example the Appellant Exhibit #16 which is a copy of notes taken by Mr. [redacted] in November of 1970 when the appellant was 12 years old states that it was the first time the appellant was "testable", that he received an overall score of 57, but also that "they still do not believe this represent his true capacity – testing is still difficult". Appellant Exhibit #15 states that the appellant "misses easy things, does harder ones". This suggests a reason unrelated to cognition. When a person

does not answer easy questions but is able to answer harder questions one must question whether there is some reason other than cognition to account for the result. Dr. Shook offered various other reasons stating that perhaps the person was not paying attention or was bored. She stated that this type of assessment cannot be determined from notes; the actual evaluation document must be reviewed to answer such questions. Unfortunately we do not have the reports from the developmental years.

Dr. Shook pointed out that the documents we do have related to the developmental years imply difficulty in getting valid scores. Yet, that is not true of the evaluations that we have after the developmental period. All the post developmental year reports state that the appellant was cooperative and that the results represent a valid measure of cognition. Dr. Shook stated that she has looked at the earliest valid reports and after review of all the tests she has determined that the appellant does not display significantly sub average intellectual functioning per DMR standards. After hearing all the testimony today she is still of the opinion that the appellant is not eligible for DMR services.

- On Cross Exam by Attorney Alfred Gray, Dr. Shook responded as follows:
  - Attorney Gray questioned Dr. Shook about her statement regarding testing that was done close together, testing that made results invalid if done within one year. Attorney Gray's was speaking specifically to the testing that was done by on January 3, 1995 by Dr. Seek and the testing done on March 3, 1995 by Dr. Rubano, suggesting that Dr. Rubano's test results would be less valid due to the dates of the reports. Dr. Shook stated that if cognitive testing (WAIS) is conducted within one year there can be a "practice effect", that is to say the person being tested can do better on the second test because they have taken the first test. It affects the performance score more than the verbal score as the experience can help to decrease the time it takes to go through sections. In this particular case, the January 3, 1995 report by Dr. Seek was not a cognitive test, it was a psychiatric evaluation; no cognitive testing was reported by Dr. Seek so there is no reason to believe that cognitive testing was done and that assumption is supported by the fact that Dr. Seek referred the appellant to Dr. Rubano specifically for cognitive testing. Dr. Seek would not have made the referral had she conducted cognitive testing herself. Dr. Shook stated that since the WAIS was not given twice within a short period of time there could not be an issue with the "practice effect" in this case.
  - Dr. Shook was questioned about her statements regarding her concerns about discrepancies in the IQ reports. She stated that her statement about her concern regarding discrepancy in scoring was due to the fact that the scoring pattern is not typical of a person with mental retardation; it is more typical of a person with a learning disorder.
  - Dr. Shook was questioned about Full Scale IQ scores being misleading when there is variability in the tests (some high others low). Attorney Gray referenced the Appellant Exhibit # 17 (DSM-IV-TR 4th edition), second page end of first paragraph where it states "When there is significant scatter in the subtest scores, the profile of strengths and weakness, rather than the mathematically derived full-scale IQ will more accurately reflect the person's learning abilities. When there is a marked discrepancy across verbal and performance scores, averaging to obtain a full-scale IQ score can be

misleading". Dr. Shook agreed with this statement stating that Full Scale IQ score could be misleading in terms of stating a person's capability because it may not be indicative of a particular ability. One must look at the sub test scores for a particular ability; the Full Scale Score cannot be used as an average.

- Dr. Shook was questioned about the beginning of the second paragraph, second page of Appellant Exhibit #17 (DSM-IV-TR 4th edition) where it states "Impairments in adaptive functioning, rather than a low IQ are usually the presenting symptoms in individuals with Mental Retardation. Adaptive functioning refers to how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone within their particular age group, socio-cultural background, and community setting." Attorney Gray interpreted this to mean that one of the things to look at when IQ scores are misleading is the adaptive behaviors. Dr. Shook stated that IQ is separate from adaptive functioning. She explained that this section states that people with adaptive behaviors can be the presenting symptom of mental retardation; it brings people in. It does not mean that it is to be looked at to determine mental retardation. A person can have major defects in adaptive behaviors but not have Mental Retardation. Adaptive functioning is the second prong in the DMR criteria; the first is the IQ score and the second is the behavior issue.
- Attorney Gray entered Appellant Exhibit # 18 into evidence as the ABAS-II conducted by DMR and asked if the appellant would meet the second prong requirement (assuming that IQ was not an issue). Dr. Shook elaborated on DMR's requirements regarding adaptive functioning. She stated that the appellant does meet DMR's standard regarding adaptive behavior but reiterated that it is to be considered after IQ is determined.
- Attorney Gray questioned why Dr. Shook was not considering the earlier IQ scores, scores that placed the [redacted] under a full scale IQ of 70. It appeared that those scores were being dismissed along with the most recent evaluation that placed [redacted] at 70 (which is within the DMR's definition of mental retardation). Attorney Gray contends that the earlier scores are the better proof of [redacted] mental retardation during the developmental period and questions why DMR is looking to evaluations conducted after the developmental period. Dr Shook responded by stating that if a person presents with no valid IQ scores, she sends that person out for cognitive testing because it is necessary to have valid and reliable testing in order to make a determination about mental retardation. In this case there were no evaluations conducted prior to age 18 that are available for review. The information that is available during the developmental period does raise questions about the validity of the test results. The letters that are submitted as appellant exhibits dispute validity of the test scores; there are statements that indicate difficulty in testing and statements reporting the appellant is "still difficult to test". Dr. Shook stated that she is looking at the post developmental stage because it is the only valid testing available and stated that the documents closest to the developmental stage are a better representation of cognition at the developmental stage. The 2007 testing that places the appellant at a Full Scale IQ of 70 may represent where he is now but not where he was then. The testing done when the appellant was a child was reported to be difficult, the appellant was uncooperative and therefore

the results are not a valid representation of cognition. However, the appellant was very cooperative with later testing as an adult. Where there is lack of cooperation, there is lack of validity; one must be aware that the person could very well test lower than their cognitive ability.

- Attorney Gray questioned if the lack of validity couldn't go either way. He proposed that the testing results could be higher than the cognitive ability. Dr. Shook stated that scores could be lower that one's cognitive ability for example if the person was not focusing or not cooperating or just having an off day, but the scores could not be higher that the person's cognitive ability unless they were given the answers or the testing was not conducted properly as to the amount of time allowed. A qualified tester will know how to conduct the test and how to report results. Dr. Shook stated that a person cannot answer a question nor do a task that they are not capable of doing. A person could do worse than they are capable of doing for various reasons but cannot do better so that the score can be lower but cannot be higher. Dr. Shook testified that scores will change as a child develops and that is the reason DMR requests cognitive evaluations around age 18 and the reason that there is eligibility for adults. She stated that if an applicant presented an IQ evaluation that was conducted at age 16, another evaluation would be requested to determine IQ for adult services. Early evaluation from childhood does not predict cognitive ability for many reasons including the difficulty with testing at the early ages. Dr. Shook stated that the appellant was testing at the borderline range at age 28 and the pattern is pretty clear; he had significant problems with participating in testing as a child and the testers felt that cognitive functioning was higher and they were not confident that they were getting valid scores. Dr. Shook further explained that the notation of variance (scatter) does not invalidate the full scale IQ score as to cognitive level. She also stated that people with mental retardation typically have some variability but one does not typically see average scores along with low scores; it is more indicative of learning disability and a disorder. The pattern of having more trouble with the expressive language when the ability is there is not unusual for a person with autism; the person has the ability but has difficulty getting it out; people with autism typically have poor social skills.
- Attorney Gray questioned if Dr Shook or any other clinician from DMR had in fact ever interviewed the appellant. Dr. Shook stated that she had not and that it was not a requirement according to DMR regulations. The appellant had been interviewed by an Eligibility Specialist who had extensive experience in conducting eligibility interviews and that practice is in accordance with DMR regulation

- On Re- Cross Exam by Attorney Kim La Due, Dr. Shook responded as follows:
  - Attorney La Due asked if Dr. Shook found that the full scale IQ scores were misleading at all. Dr. Shook answered that she did not.
  - Attorney La Due asked Dr. Shook why she did not factor in the ABAS results into her determination. Dr. Shook answered that the ABAS results were a secondary consideration once the person meets the IQ. There may be a reason that a person has low ABAS scores not related to mental retardation, and therefore it is considered only after IQ has been determined. It is possible to have an IQ below 70 and ABAS above the range necessary to be eligible.

- Attorney La Due pointed out that there is no requirement as to who conducts the interview, only that an interview is conducted. Attorney La Due asked Dr Shook to read from 115 CMR 6.02 -3 b, which states: "eligibility determination process shall include an interview with the applicant and, if feasible, other significant persons in his or her life and consideration of assessments and psychological test results. Only qualified practitioners can administer and interpret psychological tests. The Department Regional Eligibility Team Psychologist may consider the psychometric properties of intelligence test and other assessment instruments when interpreting test results, and may consider relevant data in making clinical judgment about the presence or absence of mental retardation. The determination of eligibility shall be made pursuant to 115 CMR 6.04 through 6.06". Dr Shook was asked if this was the only regulation that puts a requirement on what a psychologist must do; Dr. Shook testified that it was the only requirement.

FINDINGS:

- The following represents a listing of the documents presented as exhibits on behalf of the appellant, a brief summary of pertinent information contained within each document and my assessment as to its significance and value in determining mental retardation as that term is used in statute and regulation for the determination of DMR supports:

Appellant Exhibit #1- Two letters from Woods Schools dated May 5, 1966.

The letters, sent at appellant's chronological age of 7 years, 11 months, reference a Stanford-Benet of 2 years, 11 months with a notation that the Matthew "is still extremely difficult to test and we are not at all clear that this represents his true potential"; the second letter cites "a question of retardation vs. withdrawal"

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: While it is apparent that there are cognitive deficits, the difficulty in testing that is reported, the statement that the results may not represent true potential and the question of "retardation vs. withdrawal" is noted. In addition, the inability to review the test document posses a significant problem in assessing value as to reliability and validity.

Appellant Exhibit #2- A letter from Woods Schools dated May 12, 1966

The letter references a diagnosis of mental retardation and cites a May 5, 1965 Gesell Developmental Schedule rating of 30 months and a developmental quotient of 36 at the appellant's chronological age of 6 years 11 months.

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: While this is documentation of the result of cognitive testing and indication of cognitive deficits, the inability to review the test document posses a significant problem in assessing value as to reliability and validity.

Appellant Exhibit #3 - Neurological Evaluation by Eugene R. Tompkins, Jr., M.D. at Mass General Hospital dated August 29, 1974

The neurological evaluation was conducted at the appellant's chronological age of 16 years; it references a history of "evidence of retardation and organic brain syndrome and psychotic behavior". It references a work up when the appellant was approximately 4 years old at the Philadelphia Children's Hospital where the appellant was said to have chronic brain syndrome with mental retardation.

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: The report is a neurological evaluation; it is not a cognitive evaluation and therefore does not report the appellant's cognitive capacity in an intelligence Quotient. It does reference a history of evidence of retardation which refers to an earlier assessment at Philadelphia Children's Hospital; reference to the assessment at Philadelphia Children's Hospital corroborates testimony given by Mr. [redacted]

Appellant Exhibit #4 - Educational Plan at the Lexington Public Schools dated November 6, 1974

The report is a Full Core Educational Plan conducted at the appellant's chronological age of 16 years that states the following:

> "Matt is functioning in the mildly retarded or educable range of intellectual ability. Even within this framework, there is considerable variability in Matt's performance: he demonstrates ability in some areas but considerable gaps in others."

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: The report is an educational plan; it is not a cognitive evaluation and does not reference any specific cognitive evaluations nor does it report the appellant's cognitive capacity as an intelligence Quotient. It does document an accepted belief that the appellant was functioning at some level of mental retardation at age 16 years.

Appellant Exhibit #5 -Developmental Evaluation at the Children's Hospital Development Center, Boston, Massachusetts, dated September 21 through September 23, 1977.

The report is an unsigned document that was conducted at the appellant's chronological age of 19 to assist in educational and vocational planning. It references the evaluation at Children's Hospital of Philadelphia where a diagnosis of chronic brain syndrome with mental retardation was made when the appellant was approximately 4 years old. It offers a summary that states the following:

> '[redacted] is a young man who has an abnormal developmental history with no clear etiology for his problems. He has been diagnosed in the past as having a chronic brain syndrome and mental retardation along with evidence of important emotional factors inhibiting his development. Presently, [redacted] is functioning cognitively in the borderline range with a significant deficit in communication skills, exemplified by is difficulty in combining words

to express his thoughts. His academic skills are scattered with reading and math skills relatively adequate. ____ appears considerably isolated socially and emotionally. His significant delays in social and emotional development appear to be his greatest deficits."

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: The evaluation is an unsigned educational & vocational planning report conducted at the Developmental Evaluation Clinic; it is not a cognitive evaluation and does not reference any specific cognitive evaluations nor does it report the appellant's cognitive capacity as an intelligence Quotient. It does document a continued conviction that the appellant was functioning at some level of mental retardation, in this case reported as borderline, at age 19 years. Borderline range of IQ is above DMR's requirement for eligibility.

Appellant Exhibit #6 - Letter from Board Certified Psychiatrist, Quinn Rosefsky, M.D. dated July 12, 1984.

The letter is a hand written statement made at ____ chronological age of 26 reporting that ____ has infantile autism and that his severe social and communication handicaps existed since early childhood.

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: The document is a diagnosis from a medical professional; it is not a cognitive evaluation and does not reference any specific cognitive evaluations nor does it report the appellant's cognitive capacity as an intelligence Quotient.

Appellant Exhibit #7 - CMARC Evaluation Unit Report dated December 3, 1984

The evaluation is a four page vocational report with attached documentation signed by a Certified Rehabilitation Counselor and a Vocational Evaluator conducted at the appellant's chronological age of 26 that references a diagnosis of Autism and also makes reference to a "recent psychological" indicating "that he (____) is probably close to a "Normal" level of intelligence".

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: This CMARC Evaluation is not a cognitive evaluation and does not reference any specific cognitive evaluations nor does it report the appellant's cognitive capacity as an intelligence Quotient. It does document that the evaluator appears to report an improvement in cognitive capacity since this report describes a probability that the appellant is close to a normal level of intelligence.

Appellant Exhibit #8 -Initial Psychiatric Evaluation by Andrea Seek, M.D. dated January 3, 1995

This is an initial psychiatric evaluation conducted by Psychiatrist, Dr. Andrea Seek at the appellant's chronological age of 37, where Dr. Seek references the following information that was related to her regarding the appellant's IQ :

"past neuropsychological testing reportedly revealed a full scale IQ from 60-70. This was last done in the early 1980's and Mr. Olson does not know how to locate these results".

Dr Seek also states a diagnosis in this initial psychiatric evaluation as follows:

AXIS I: No diagnosis
AXIS II: Autism and mild mental retardation
AXIS III: No medical problems

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: Dr. Seek is a psychiatrist. Her report does not include a cognitive evaluation; it does makes reference to past neuropsychological testing results that were reported to her by the appellant's father and does document her assertion that the appellant was functioning at some level of mental retardation, in this case reported as mild mental retardation. The report corroborates Mr. ___ testimony, testimony that recalls an IQ of between 60-70. However, no other critical information is given. Without the ability to review the cognitive testing reports it is not possible to assess the reliability and validity of the reported full scale IQ scores.

Appellant Exhibit #9- Neuropsychological Evaluation by Licensed Psychologist Maureen Rubano, Ph.D. dated March 13, 1995

The report is a signed Neuropsychological Evaluation conducted by a Ph.D. licensed psychologist that was performed at the appellant's chronological age of 36 years to aid the Massachusetts Rehabilitation Commission in providing services for the appellant. The evaluation states that __ has a history of autism; it lists 9 test that were conducted and reports the results of cognitive testing using the WAIS-R as follows:

- "The patient is functioning cognitively at present in the Borderline Range of intelligence overall. There is a 95% probability that the patient's true FSIQ (Full Scale Intelligence Quotient) lies between 73 and 83".
- "The sum of scaled scores for the Verbal subtest lies in the Borderline Range as there is a 95% probability that the VIQ (Verbal Intelligence Quotient) lies between 69 and 81".
- "The Performance sum lies in the Low Average range. There is a 95% probability that the PIQ (Performance Intelligence Quotient) lies between 76 and 90".
- "Because of the extreme inter-test scatter in both the Verbal and Performance scales, the summary scores are not representative of the patient's abilities in most areas". "There is considerable inter-test scatter in both scales (the summary scores and the subtest scores); that is there are areas in which the patient functions in the average range, and areas in which his functioning is far below average". "The poor performances (in the areas of Picture Arrangement and Comprehension) are consistent with the long-standing diagnosis of autism". "In contrast (to poor performance in these two areas), the patient's ability in Picture Completion, Block Design, Object Assembly, and his ability to perform mental computations to solve simple arithmetic problems are all in the Average Range".
- "Because of his excellent cooperation with the assessment, there is no reason to doubt that these results are representative of his current best level of functioning".

This evaluation also reports the results of the WAIS-R, NI under the heading of "Language" as follows:

- "Expressive Vocabulary score was very far below average"
- "The multiple choice score on the same subtest was in the average range"
- "From among four choices, the patient was able to select the best synonym for such low-frequency works as "plagiarize", "audacious" and "tirade". Moreover, he was able to read all of the items and all of the foils without assistance".

The summary statement of this evaluation states the following:

- "On cognitive testing, the patient demonstrates very great discrepancies between average abilities in some areas and profoundly impaired abilities in other areas".

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: Dr. Rubano conducted a neuropsychological evaluation using the cognitive test results of the WAIS-R and WAIS-R, NI. Dr. Rubano is a licensed psychologist well qualified to conduct such testing and has used a widely accepted cognitive test, the WAIS-R. It is the first and earliest cognitive evaluation presented that meet all the necessary criteria to determine reliability and validity of the testing as it was: (1) performed by using an accepted cognitive evaluation tool (2) conducted by a licensed psychologist, (3) reported as both raw scores and narrative explanation of scores, and (4) evaluated as to the testing conditions and the likelihood that the results represent a valid assessment of cognitive level of functioning. This assessment has value in determining the appellant's IQ and was given significant weight.

Appellant Exhibit #10 -Neuropsychological Evaluation by Sean Hyde O'Brien, Psy.D & Licensed Psychologist Karen Conti Lindem, Ph.D. dated July 23&27, 2007.

The report is a 24 page, signed Neuropsychological Evaluation conducted by a Ph.D. licensed psychologist and a Doctor of Psychology. The evaluation was conducted at the appellant's chronological age of 49 years, at the request of the appellant's parents, and states that the evaluation is being conducted "in order to gain a better understanding of his current cognitive and adaptive functioning abilities."

The report is a comprehensive evaluation listing 13 tests including the Wechsler Adult Intelligence Scale, Third Edition (WAIS-III) and consists of the actual test scores as well as narrative report. The results of the cognitive testing using the WAIS-III includes the following statements and findings:

- 's cognitive abilities were assessed in the context of this evaluation, with overall intellectual functioning placing him in the lower end of the Borderline range (WAIS-III FSIQ=70, 2nd percentile)."
- A statement that " the Full Scale IQ score does not reflect a tangible entity, but instead a conceptual estimate of an individual's intellectual abilities as compared to same-age peers".

- The Full Scale IQ Score of 70 has a 95% confidence interval of 67-75
- The Performance Scale IQ Score was reported at 77 also at the Borderline Range and with a 95% confidence interval of 72-85.
- The Verbal Scale IQ Score was reported at 68 in the Extremely Low Range with a 95% confidence interval of 64-74.
- The Index Scores were also reported as follows:
  Verbal Comprehension 76 & 95% confidence interval 71-83
  Perceptual Organization 86 & 95%confidence interval 72-85
  Working Memory 59 & 95 % confidence interval 55-68
  Processing Speed 84 & 95% confidence interval 77-95

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: This is a comprehensive neuropsychological evaluation. It is the second cognitive evaluation presented that meet the necessary criteria of being (1) performed by using an accepted cognitive evaluation tool (2) conducted by a licensed psychologist, (3) reported as both raw scores and narrative explanation of scores, and (4) evaluated as to the testing conditions and the likelihood that the results represent a valid assessment of cognitive level of functioning. This assessment does have value in determining the appellant's IQ; however, it was conducted farther away from the developmental period than the earlier cognitive evaluation and therefore has less weight as a retrospective view of the appellant's IQ during the developmental period.

Appellant Exhibit #11- A letter from Woods Services dated September 25, 2007

The letter is a statement signed by the Assistant Director, sent in response to Mr. request for records during residence at the Woods School. The document confirms that was a resident from 4/2/1963 to 8/14/1972 with a diagnosis of Mental Retardation. It further states that the facility is a residential facility that serves individuals with physical and developmental disabilities and that records were destroyed in accordance with the Pennsylvania State Records Retention Law.

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: The letter does not reference any specific cognitive evaluations nor does it report the appellant's cognitive capacity as an intelligence Quotient. It does document that the appellant was considered to be mentally retarded during the time spent as a resident at the Woods Schools for the Retarded.

Appellant Exhibit #12- Letter from Lexington Public Schools dated October 1, 2007

The letter is a statement signed by the Student Services Secretary, sent in response to Mr. request for records during the time that attended programs at the LPS. The document states that all graduates are notified that records will be maintained for 7 years and after that time all records are destroyed. Since has been out of school almost 25 years, there are no records available.

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: The letter does not reference any specific cognitive evaluations or intelligence quotient. It does substantiate the appellant's testimony concerning the inability

to obtain official documents regarding cognitive testing during the developmental years.

Appellant Exhibit #13-A letter from Woods Schools dated June 5, 1967

The letter was sent as a cc. to Mrs. It is an unsigned copy sent by Harold S. Barbour, Ed.D., President of The Woods Schools to Dr. Norman Paul when was at a chronological age of 9 years. The letter references and a request of Mrs. o send copies of reports. It lists four enclosed Psychological Evaluations; an Initial Psychological Evaluation conducted on 5-10-63 , a Second Psychological Evaluation on 4-2-64, a Third Psychological Evaluation on 5-5-65 and a Forth Psychological Evaluation on 4-42-66. The letter states that the material is "CONFIDENTIAL INFORMATION FOR PROFESSIONAL USE ONLY"; the capitalized statement apparently capitalized for emphasis. Mrs. did not receive copies of the evaluations.

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: The letter does reference 4 specific cognitive evaluations conducted over a four year period at the Woods Schools but without listing any results or cognitive capacity as intelligence Quotients. It corroborates testimony regarding the inability to obtain written copies of evaluation reports and testimony that many cognitive evaluations were conducted while the appellant was a resident at the Woods Schools for the Retarded.

Appellant Exhibit #14- Handwritten notes by Mr. dated June 2, 1965

The exhibit is a one page copy of notes written by Mr. during a meeting where he was receiving reports on progress. The notes were taken when was a 7 years old. The notes state the following under the heading of "Psychologist":

> "Integrates at 30 months- IQ 36 to 61 depending on test - little progress registered on tests".

Mr. notes also state the following under the heading of "Psychiatrist":

> "No diagnosis since that is a prognosis, "has not given up hope"- cannot say what is capacity, what is behavioral disorder, dislikes terms autism, childhood schizophrenia"

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: This is corroboration of testimony regarding cognitive testing and Appellant Exhibit #2. Without the ability to review the cognitive testing reports it is not possible to assess the reliability and validity of the reported full scale IQ scores.

Appellant Exhibit #15-Handwritten notes by Mr. dated May 26, 1969

The exhibit is a copy of three pages of handwritten notes taken by Mr. during a parent conference where he was receiving reports from therapist regarding progress. The notes were taken at chronological age of 11 years.

Mr. [redacted] handwritten notes state the following under the heading of "Gilveau", who is identified as a person from the Ed Dept:

"Reads at 1st grade level- draws stick figures only- classified as trainable ?? not being taught at trainable level"

Mr. [redacted] handwritten notes state the following under the heading of "Boyd", who is identified as a teacher:

"reads upside down, sideways, etc. knows all states and capitals- can memorize easily and quickly- get most spelling test 100 – coordination declined recently – basis?- some indication that this report was based on a single formal test, rather than regular observation.. [redacted] extremely happy over last letter – got us in class and read it out loud to the class".

Mr. [redacted] handwritten notes state the following under the heading of "Morain", who is identified as a person from the Psych Department:

"Wechsler Pre School (?) WPPSI- 4 year verbal IQ 40- up 10 points from 2 years ago- 6 ½ yr performance IQ 65, 7 yr Blocks (?)- rate 6 months/1 year !!? - performance & scores inconsistent- misses easy things does harder ones claimed that [redacted] didn't know the answer to

(1) Where do you buy sugar?

(2) How do you fasten two pieces of wood together?

(3) How do you boil water?"

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: This is corroboration of testimony regarding cognitive testing. . While it is apparent that there are cognitive deficits without the ability to review the cognitive testing reports it is not possible to assess the reliability and validity of the reported IQ scores.

Appellant Exhibit #16-Handwritten notes by Mr. [redacted] dated Nov. 30, 1970

The exhibit is two pages of handwritten notes taken by Mr. [redacted] during a meeting at Woods Schools where he was receiving reports from a therapist regarding [redacted] progress. The notes were taken at [redacted] chronological age of 12 years.

Mr. [redacted] handwritten notes state the following under the heading of "Mr. Berkley", who is identified as [redacted] teacher:

[redacted] is well behaved. He is working at about the top of the second grade level"

Mr. [redacted] handwritten notes state the following under the heading of "Mrs. Woodring", who is identified as the Social Worker:

"A new psychological has recently been completed. This is the first time that [redacted] has been "testable". Overall score is 57. Highest score in arithmetic skills is 65. Lowest Social Skills is 30. Score was 20 points higher than previous score? (They) Still do not believe this represents his true capacity testing still difficult. Bender-Gestalt gave signs of "organicity". (I doubt this-[redacted] Organicity also shown by analytic and synthetic subtest. They expect to recommend continuation of [redacted] 750 next year since he is making good progress."

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ:

This is also corroboration of testimony regarding cognitive testing that was conducted at the Woods School. The tester indicates that is was a first time that testing was successful but indicates that they still do not believe the results represent true capacity. Without the ability to review the cognitive testing reports it is not possible to assess the reliability and validity of the reported IQ scores.

Appellant Exhibit #17-Copy of a section of DSM-IV-TR 4th edition 2000 re: the "Diagnostic Features of Mental Retardation".

This exhibit is a two page document that states that the essential diagnostic feature of Mental Retardation requires three criteria; the first requirement is one of significantly sub average general intellectual functioning, the second is a requirement that it is accompanied by significant limitations in adaptive functioning and the third is a requirement that the onset must occur before age 18 years. It lists several of the standardized intelligence tests including the Wechsler IQ test and also discusses a measurement error of approximately 5 points that may vary from instrument to instrument. It concludes that it is "possible to diagnose Mental Retardation in individuals between 70 and 75 who exhibit significant deficits in adaptive behavior. Conversely, Mental Retardation would not be diagnosed in an individual with an IQ lower than 70 if there are no significant deficits or impairments in adaptive functioning." " When there is significant scatter in the subtest scores, the profile will more accurately reflect the person's learning abilities. When there is a marked discrepancy across verbal and performance scores, averaging to obtain a full-scale IQ score can be misleading." "Problems in adaptation are more likely to improve with remedial efforts than is the cognitive IQ, which tends to remain a more stable attribute."
ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: This is an accepted document in the field of mental retardation. DMR's definition of mental retardation is found in 115 CMR 6.04(1)

Appellant Exhibit #18-Adaptive Behavior Assessment System- Second Edition (ABAS-II) dated June 6, 2007.

The report is a four page document listing the results of an ABAS-II that was administered as part of DMR's eligibility process and was performed at the appellant's chronological age of 49 years. The information was obtained from Mr. [redacted] who is identified as the Rater.
The report lists 4 areas that make up the Composite Scores.

- The first is the GAC Score, an overall adaptive functioning score where Matthew was rated at 56, placing him in the Extremely Low Range.
- The second score is the Conceptual Score which is a cluster area made up scores from the Communication, Functional Academic, and Self Direction areas of the test. Matthew was rated at 57, placing him in the Extremely Low Range.
- The third score is the Social Score which is a cluster area made up of scores from the Leisure Skills and Social Skills areas of the

test; [redacted] was rated at 54, placing him in the Extremely Low Range.

- And the fourth score is the Practical Score which is a cluster area made up of the scores from the Community Use, Home Living, Health & Safety and Self Care areas of the test; Matthew was rated at 76, placing him in the Borderline Range .

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ:
The appellant obtained a General Adaptive Composite (GAC) of 56. If the appellant meets the IQ requirement for the definition of mental retardation, these adaptive behavior assessment scores would be considered and would fall into the range that is necessary in order to be diagnosed with mental retardation. The Adaptive Behavior Assessment System Second Edition (ABAS-II) is an accepted evaluation tool for the purpose of determining adaptive functioning, however in accordance with DMR regulation, significant limitations in adaptive functioning are considered when they are concurrent and related to significant sub-average intellectual functioning, therefore adaptive functioning (ABAS-II) is considered in the determination of mental retardation after IQ has been determined.

- The following represents a listing of the documents presented as exhibits on behalf of DMR, a brief summary of pertinent information contained within each document and, where indicated, an assessment as to value in determining IQ :

DMR Exhibit #1-Curriculum Vitae of Patricia H. Shook, Ph. D.
This exhibit is certification of Dr. Shook's standing as an expert witness in the field of mental retardation both by virtue of her advanced degrees and extensive experience in the field of psychology.

DMR Exhibit #2-DMR's Determination of Ineligibility dated June 26, 2007
This document is signed by Dr. Shook, states a determination as to DMR finding of ineligibility, and states the following explanation for that finding:

"There is one cognitive evaluation available in the record conducted in March 1995 when Mr. [redacted] was 36 years old. The Wechsler Adult Intelligence Scale Revised (WAIS-R) was administered with the scores reported in terms of confidence intervals. He obtained a Verbal IQ (VIQ) in the range of 69 to 81 (extremely low to low average); Performance IQ (PIQ) in the range of 76 to 90 (borderline to average); Full Scale IQ (FSIQ) in the range of 73 to 83 (borderline to low average). Given significant intersub test scatter, the examiner, Dr. Rubano, states that summary scores (VIQ, PIQ, FSIQ) are not representative of Mr. [redacted] cognitive abilities. While there are no evaluations available from the developmental period there is a report that Mr. [redacted] obtained an IQ=61 (equivalent to extremely low) on the Merrill Palmer Scale of Mental Tests at age 6 also it is suggested that he obtained an IQ score in the 60s at some point in the 1980s but no further information is provided. The Adaptive Behavior Assessment System Second Edition (ABAS-III) was administered in June 2007 with Mr. [redacted] father as respondent. He obtained a General Adaptive Composite (GAC) = 56

(extremely low). However, given evidence of cognitive functioning at the borderline to low average range, Mr. [redacted] is not eligible for services from the Department of Mental Retardation as an adult."

DMR Exhibit #3-.DMR's Letter of Denial of Eligibility dated July 12, 2007

DMR Exhibit #3 is a copy of DMR's notification to the appellant of his denial of eligibility and right to appeal.

DMR Exhibit #4-Psychological testing at Children's Hospital dated Feb.27, 1986

DMR Exhibit #4 is a 3 page report signed by Mr. John E. Lappen, Jr. Ed. M., Research Assistant, and Peter H. Wolff, M.D., Director of the Fragile-X Research Project at Children's Hospital, Boston, Massachusetts. It states that [redacted] participated as a control subject in a study of Fragile-X Syndrome being carried out at Children's Hospital in Boston.

The report includes results from a Wechsler Adult Intelligence Scale-Revised (WAIS-R), conducted by Mr. Lappen and Dr. Wolff at the time of the appellant's chronological age of 27 years. The report states that [redacted] performance place him in the Mid-Borderline Range of cognitive functioning with a Full Scale IQ of 76, in the Borderline Range of Verbal IQ functioning with a Verbal IQ score of 74, and in the Low Average Range of Performance IQ with a Performance IQ score of 85.

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: This Wechsler Intelligence testing was conducted by a research assistant and by the director of the Fragile-X Research project at the appellant's chronological age of 28 years. It is the earliest cognitive evaluation available for review and meets most of the criteria of reliability and validity: it was conducted using the WAIS-R; it reports cognitive test results as both raw scores and in narrative form; and it makes a statement as to the likelihood that the results represent a valid assessment of cognitive level of functioning. However, since this test was not conducted by a licensed psychologist, I gave this report less weight in making my recommended decision as to eligibility.

DMR Exhibit #5-Neuropsychological Evaluation report dated March 13, 1995

DMR Exhibit #5 is the same document as Appellant Exhibit #9. The report is a signed Neuropsychological Evaluation conducted by a Ph.D. licensed psychologist that was performed at the appellant's chronological age of 36 years to aid the Massachusetts Rehabilitation Commission in providing services for the appellant. See Appellant Exhibit #9.

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ: Significant value was given to this evaluation -See Appellant Exhibit #9.

DMR Exhibit #6-Neuropsychological Evaluation report dated July 23 & 27, 2007

DMR Exhibit #6 is the same document as Appellant Exhibit #10.

The report is a 24 page, signed Neuropsychological Evaluation conducted by both a Ph.D. licensed psychologist and a Doctor of Psychology. The evaluation was conducted at the appellant's chronological age of 49 years. See Appellant Exhibit #10.

ASSESSMENT OF VALUE TOWARDS THE DETERMINATION OF IQ:

Value was given to this evaluation - See Appellant Exhibit #10.

- The following findings are made as a result of a careful assessment of evidence presented:
  - The appellant has demonstrated that he was not allowed the right to obtain actual copies of cognitive evaluations conducted during the developmental years and that these evaluations have subsequently been destroyed. (Appellant Exhibit #13 , 11, & 12)
  - The appellant has demonstrated that several standard cognitive tests were conducted during the developmental years and that results were reported verbally or in some cases referred to in written documents. (Appellant Exhibit #1, 2, 13, 14,15, & 16). In several instances notations regarding difficulty with testing were reported. (Appellant Exhibit #1, 16,) Without more details and/or without reviewing the actual evaluation report, it is not possible to determine the validity and reliability of the testing. Therefore, these IQ values can not be considered for the purpose of determining an actual IQ measurement.
  - The appellant has demonstrated that several professionals with experience in the field of mental retardation, who either conducted evaluations within their respective fields or provided treatment to the appellant, have stated that mental retardation was present at some level during the developmental years. (Appellant Exhibit # 1,2,3,4,8,11,1314,15, & 16). I find that there is adequate evidence to presume some level of mental retardation was present during the developmental years. The issue becomes one of determining the extent of mental retardation during the developmental period.
  - To determine whether mental retardation existed during the developmental years at a level that is consistent with DMR regulations, a retrospective look will be used. We now have 3 cognitive evaluations before us; the first conducted at Children's Hospital in 1986, the second conducted by Dr. Rubano, a licensed psychologist in 1995, and the third conducted at Lesley University by two licensed psychologists in 2007.
  - The earliest evaluation before me, the Psychological testing at Children's Hospital, was conducted in 1986 at the appellant's age of 28 years. The results indicate that the appellant was at the mid-borderline range of cognitive functioning with a Full Scale IQ of 76; a result that indicates the appellant was functioning above the cognitive level necessary for DMR eligibility. However, this evaluation was performed by a research assistant with a masters in education and by the director of the Fragile-X Research project, a medical doctor. (DMR Exhibit #4) The question of reliability and validity is therefore present as neither are licensed psychologists. Consequently, little weight was given to these results in making my recommended decision as to eligibility.
  - The second evaluations available for consideration is the 1995 Psychological testing by Dr. Rubano using the WAIS-R and conducted when the appellant was 36 years old. The results were reported in confidence intervals as follows:
    Full Scale IQ (FSIQ) in the range of 73 to 83 (borderline to low average)
    Verbal IQ (VIQ) in the range of 69 to 81 (extremely low to low average)
    Performance IQ (PIQ) in the range of 76 to 90 (borderline to average)
  - This evaluation was considered to be "faulty" by Mr. parts were quoted in testimony given by Mr. to support his contention that the Full

Scale IQ score is not valid. The quotes states that "because of the extreme inter test scatter in both the Verbal and Performance scales, the summary scores are not representative of the patient's abilities in most areas" and "this admixture of average abilities in some areas and below average abilities in others means that the summary scores are not representative of most of the patient's abilities". Dr. Shook agrees with this assessment but testified that this statement does not in any way invalidate the Full Scale IQ score. She testified that when she sees this statement in a cognitive assessment it is meant to tell the reader that one must look to the sub-test scores to get a true picture of the person's abilities in different sub cognitive areas. Because a person with mental retardation typically presents with less "scatter" that is to say less discrepancy between scores in the sub cognitive areas, the full scale IQ which is somewhat of an aggregate score usually is a good indicator of the person's abilities in all sub cognitive areas. In the case of scatter, the Full Scale IQ score is not the best indicator of the person's cognitive abilities in the sub cognitive areas and that is what is being stated in this report. It does not mean to invalidate the Full Scale IQ score which remains a valid score of IQ to determine mental retardation; there remains a 95% probability that the FSIQ is between 73 and 83. Dr. Shook stated that the statement that would be looked to as a determinate of validity of the Full Scale IQ score is the statement that describes the reporter's assessment of cooperation and the reporter's assessment as to whether the results are representative of the person's current best level of functioning. In this evaluation Dr. Rubano stated as follows: "Because of his excellent cooperation with the assessment, there is no reason to doubt that these results are representative of his current best level of functioning". I find this evaluation to be comprehensive and one that meets all the criteria necessary to determine reliability and validity. I find the results do represent a valid assessment of the appellant's cognitive level of functioning and find that the FSIQ score range of 73 to 83 is a valid score. Additionally, it is the closest cognitive evaluation to the appellant's developmental period and therefore was given the greatest weight in making my recommended decision.

- The 3rd cognitive evaluation available for consideration is the Neuropsychological Evaluation conducted in 2007 at age 49. This evaluation was performed by Sean Hyde O'Brien, Psy. D and Licensed Psychologist Karen Conti Lindem, Ph.D. and is an evaluation that also meets all the requirements to determine reliability and validity. The results of the WSIA-III are as follows:

  Full Scale IQ Score of 70
  Performance Scale IQ Score of 77
  Verbal Scale IQ Score of 68

  I find this report to be comprehensive. A summary statement within the report states that the appellant displayed an overall cognitive functioning that places him within the lower end of the Borderline Range and that his discrete performances ranged from the impaired to low average, and the report concludes with a diagnostic impression of Mild Mental Retardation. I find that this cognitive evaluation conducted 12 years later than the 1995 evaluation has less weight as a retrospective determinant of mental retardation in the developmental years. Because a person's cognitive abilities can change over time for many reasons and do often deteriorate as a person gets older, a retrospective look must consider the possibility of other factors influencing cognition over time and look to valid testing that is closest to the developmental period. Therefore although this evaluation meets all requirements of validity and reliability, it does not

override or change the findings of the earlier neuropsychological evaluation done in 1995.

CONCLUSIONS:

After a thorough review of the evidence which includes three and one half hours of testimony and 22 separate document submitted as exhibits, I find that the Appellant has not shown by a preponderance of the evidence that he meets the DMR eligibility criteria. I come to that conclusion based on the following facts:

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 assesses shall be
>
> a) areas of independent living/practical skills;
> b) cognitive, communication, and academic/conceptual skills; and
> c) social competence/social skills."

There is no dispute that the Appellant is domiciled in the Commonwealth. However, I find that the weight of the evidence shows that the appellant did not meet the standard of significantly sub-average intellectual functioning as defined by 115 CMR 2.01 and that the

appellant 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 specific reasons are as follows:

- The early testing results that are documented in the appellant exhibits did not present adequate information to evaluate for reliability and validity. The question of validity is actually raised within some of these documents; some documents have statements in which the difficulty in testing is noted and statements that question if the results actually represent the appellant true cognitive ability
- The issue of reliability and validity is vital in determining IQ for the purpose of DMR eligibility. The use of accepted cognitive tests, an assessment of the reporter's credentials and a review of test results both in terms of reported scores and narrative assessment of scores are required to evaluate if the test scores are reliable and valid.
- The early testing results that are documented in appellant exhibits were not considered as they did not meet the requirement of reliability and validity.
- The exhibits present by the appellant do document the presence of some level of mental retardation during the developmental years. None of the reports can be verified for reliability and validity but have been submitted for consideration. In some cases the appellant has been described as a person with mild mental retardation, in some cases as a person with borderline mental retardation and in one other as having almost normal intelligence. Therefore a retrospective assessment was conducted.
- The 1986 evaluation (DMR Exhibit #4) was not given weight in my consideration as to the presence of mental retardation since the evaluation was not conducted by a licensed psychologist.
- Two evaluations conducted after the developmental stage meet all the criteria for reliability and validity, the 1995 neuropsychological evaluation (Appellant Exhibit #9 & DMR Exhibit #5) conducted at the appellant's age of 36 and the 2007 neuropsychological evaluation (Appellant Exhibit #10 & DMR Exhibit #6) conducted 12 years later at the appellant's age of 49.
- The assertion that the 1995 cognitive evaluation results are misleading has been clarified and proven to be unfounded.
- The 1995 evaluation reports the appellant at a Full Scale IQ in the range of 73 to 83 which is above the IQ level required for DMR eligibility. Given that a person cannot score higher than their cognitive capacity this is a valid full scale indicator of cognition and this 1995 evaluation has the most weight as it is closest to the appellant's developmental stage
- The 2007 evaluation reporting a Full Scale IQ of 70 is an indicator of cognition 12 years after the 1995 evaluation. Given that a person's cognitive capacity can and most often does decline with age, this evaluation has less weight as a retrospective look and the 1995 evaluation is considered to be the most valid indictor of IQ level during the developmental stage.

I find that the weight of the evidence presented by the appellant indicates that the appellant does not meet the standards set forth in DMR regulations regarding eligibility. 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 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: April 21, 2018

Jeanne Adamo
Hearing Officer