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Executive Office of Health & Human Services  
Department of Mental Retardation  
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March 16, 2006

Ms. Sandra Trainor, RN  
c/o D. R.

[REDACTED]  
[REDACTED] MA [REDACTED]

Re: Appeal of D. R.  
Final Decision

Dear Ms. Trainor:

Enclosed please find the recommended decision of the hearing officer in the above appeal. She held a fair hearing on the appeal of your client's eligibility determination.

The hearing officer's recommended decision 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 and therefore adopt its findings of fact, conclusions of law and reasoning as my own. Your appeal is therefore allowed.

You, or any person aggrieved by this decision may appeal to the Superior Court in accordance with G.L. c. 30A. The regulations governing the appeal process are 115 CMR 6.30-6.34 and 801 CMR 1.01-1.04.

Sincerely,

  
Gerald J. Morrissey, Jr.  
Commissioner

GJM/ecw

cc: Marcia Hudgins, Hearing Officer  
Amanda Chalmers, Regional Director  
Marianne Meacham, General Counsel  
Veronica Wolfe, Regional Eligibility Manager  
Douglas White, Assistant General Counsel  
Patricia Shook, Psychologist  
Victor Hernandez, Field Operations Senior Project Manager  
File

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of D[REDACTED] R[REDACTED]

This decision is issued pursuant to the regulations of the Department of Mental Retardation (DMR) (115CMR 6.30 - 6.34) and M.G.L. Chapter 30A. A hearing was held on December 5, 2005 at DMR's Hogan Regional Center in Hathorne, Massachusetts.

Those present for all or part of the proceedings were:

D[REDACTED] R[REDACTED]

Sandra Trainor

Veronica Wolfe

Sandra Brennan

Patricia Shook, Ph.D.

Douglas J. White

Appellant

Neighbor/Advocate

DMR Regional Eligibility Manager

DMR Eligibility Coordinator

DMR Regional Eligibility Psychologist

Attorney for DMR

The evidence consists of documents submitted by the Appellant numbered A1-2 and documents submitted by DMR numbered D1-5 and approximately 1 hour of oral testimony. The Appellant provided no expert testimony.

**ISSUE PRESENTED**

Whether the Appellant meets the eligibility criteria for DMR supports by reason of mental retardation as set out in 115 CMR 6.03(1).

**SUMMARY OF THE EVIDENCE PRESENTED**

1. This Appeal is based on the Appellant's denial of eligibility for DMR services. (D1-2)
2. The Appellant is a 45-year-old female who resides in [REDACTED], MA. (A1, D1-2)
3. Two evaluations of the Appellant's intellectual functioning after the age of 18 were entered into evidence. (A1-2)
4. Two Adaptive Behavior Assessment System-II (ABAS-II) Summary Pages were entered into evidence. (D4-5)
5. One report of an ABAS-II was entered into evidence. (D5)



6. In December of 2003, the Appellant was tested by Daniel R. Morocco, ED.D. The testing was done under the auspices of the Massachusetts Rehabilitation Commission. On that occasion, the Appellant was given the Wechsler Adult Intelligence Scale-III (WAIS-III). The Appellant's scores on the test were as follows: Verbal IQ score - 69, Performance IQ score - 74 and Full Scale IQ score - 69. The examiner stated that the Appellant was cooperative and compliant and exhibited adequate motivation, was able to establish and maintain a reasonable level of rapport, and generally appeared to be working to the best of her ability. Dr. Morocco concluded that the Appellant's Verbal IQ score fell into the delayed range, Performance abilities were borderline, and her Full Scale functioning was delayed. He noted that there were no significant discrepancies among her scores. In his Summary, Dr. Morocco concluded that the Appellant presented with mild mental retardation and listed his diagnosis on Axis II. (A1)
7. In April of 2005, the Appellant was tested by Margaret Marino, Ph.D. This testing was performed after DMR's initial determination of ineligibility. On that occasion, the Appellant was given the WAIS-III. The Appellant's scores on the test were as follows: Verbal IQ score - 66, Performance IQ score - 74 and Full Scale IQ score - 66. The examiner stated that the Appellant was friendly and cooperative and appeared to be making best effort. Dr. Marino concluded that the Appellant's Full Scale IQ score of 66 was in the extremely low range of intellectual functioning. Dr. Marino also administered a WRAT-3 to assess the Appellant's academic abilities. In Reading, Spelling and Arithmetic, the Appellant scored at the second grade level. Dr. Marino suggested that given the test results, someone familiar with the Appellant should complete an ABAS-II as a functional assessment of her abilities. She also recommended the Appellant receive services that would increase her independence. (A2)
8. In November of 2004, an ABAS-II was given to the Appellant by DMR. On this administration of the ABAS-II, the Appellant rated herself on her adaptive skills. The Summary Page of that assessment shows that the Appellant has limitations in the areas of functional academics - scaled score of 4, leisure - scaled score of 4, and social - scaled score of 5. There was no report accompanying this document. (D4)
9. Due to questions raised at the hearing by Sandra Trainor relative to the reliability of the Appellant's self-reporting on the ABAS-II, a second ABAS-II was completed in December of 2004. This time the rater was N. E. [redacted], the Appellant's neighbor. The Summary Page of that assessment shows that the Appellant appears to have limitations in the areas of functional academics - scaled score of 5, health and safety - scaled score of 4, leisure - scaled score of 2, self-direction - scaled score of 4, social - scaled score of 2, and work - scaled score of 5. (D5)
10. A report authored by Patricia Shook which accompanied the Summary Page of the 2<sup>nd</sup> ABAS-II states that the Appellant meets the DMR definition of mental

retardation in that she has limitations related to, and existing concurrently with, significantly sub-average intellectual functioning in two or more adaptive skill areas. Dr. Shook states that the Appellant would meet this criterion based on her scores in leisure and social, both (2), or extremely low. The report goes on to say that despite her limitations, the Appellant is not in need of specialized services or supports in three or more of the following seven areas: communication, self care, home living, community use, health and safety, functional academics, and work in that she does not have three or more scores in which she has substantial limitations, i.e. two standard deviations or more below the mean and therefore the Appellant is ineligible for DMR services. (D5)

11. Veronica Wolfe, DMR's Regional Eligibility Manager for the Northeast Region testified on behalf of DMR. She stated that she was responsible for the overall operation of the Regional Eligibility Team which processes approximately 700 to 1000 applications a year. She testified that she was familiar with the Appellant's application. She identified a letter dated January 19, 2005 finding the Appellant ineligible for DMR services as an adult. Ms. Wolfe testified that there were questions raised by the Appellant and her advocate. An informal conference was held on March 17, 2005 where the Eligibility Psychologist and the witness reviewed the eligibility decision with the Appellant. Further testing was recommended. Ms. Wolfe explained that the testing was reviewed by Dr. John Higgins along with all of the Appellant's eligibility materials, and he concluded that the Appellant was not eligible for DMR services. (D1-2)
12. Patricia Shook, Ph.D. testified for DMR as an expert. She stated that she was employed by DMR as the Regional Eligibility Psychologist for the Northeast Region. She stated that her primary responsibility was to review material and to determine whether applicants are eligible for DMR services. She stated that she was familiar with the Appellant's case. She stated that she had seen the Appellant's record and read all of the data. She testified that the Appellant is not eligible according to the regulations. She stated that she was familiar with the ABAS-II and explained that it was a test to determine someone's level of adaptive behavior. She stated that according to the regulations there were three different areas that need to be considered when determining mental retardation and eligibility. She stated that one is IQ which is to be below 70 to 75. The second is adaptive behavior and substantial limitations that are concurrent with and related to the IQ scores. She stated that if a person has an IQ of below 70 but adaptive behavior skills that are high, the person would be ineligible. She stated that there was a third area that needed to be considered which was that mental retardation must be present before the age of 18. She stated that there are several instruments that can be used to assess adaptive behavior, and DMR has been using the ABAS-II. Dr. Shook stated that an ABAS-II had been administered in this case. She stated that an informant who knows the individual in question can be used to complete the ABAS-II or the individual themselves can complete the instrument. She went on to say that in this case, the Appellant completed the ABAS. She stated the Jim Sumner, the Eligibility Specialist did the work in assessing the data.



Dr. Shook testified that the ABAS-II has good reliability and validity. She stated that the lower the IQ, the lower the adaptive behavior scores, but there can be some variation. She stated this ABAS-II administered in November of 2004 shows that the Appellant is average in a number of areas. She stated that in the scaled scores, average is between 8 and 12. She stated that the Appellant scored in the borderline range in the areas of functional academics, leisure and social. She stated that 6-7 is below average. The Appellant received a score of 6 in the area of work. The doctor opined that this could have been related to the fact that due to an injury, the Appellant had been working fewer hours than usual. (D4)

Dr. Shook stated that she was familiar with DMR's standards for eligibility. She explained that the requirement is that the individual have significantly sub average intellectual functioning existing concurrently with related limitations in two or more enumerated adaptive skill areas and that mental retardation manifest before the age of 18. Dr. Shook stated that when looking at adaptive behavior, one looks to see if it is related to the IQ. She stated that this means that when looking at someone with an IQ of 70 or below, one would be looking at scores of 1-3. She stated that the Appellant's ABAS-II Summary does not show any scores in that extremely low range. She went on to say that the Appellant did have a couple in the borderline range. She stated that in determining eligibility there is another criterion. She explained that it must be determined that the individual is in need of specialized services or supports in 3 or more of 7 enumerated areas. She stated that the only areas where the Appellant had a borderline score were functional academics and work. She stated that in order to meet this criterion, the Appellant needed a low score on at least one additional area. (D4)

Dr. Shook stated that she was familiar with IQ testing and that its purpose is to determine intellectual functioning. She stated that the Appellant had not provided DMR with any IQ testing done prior to age 18. Dr. Shook stated that she reviewed a report by Daniel Morocco of the Mass. Rehab Department (Mass. Rehab) relative to testing performed in 2002 when the Appellant was 42 years of age. She stated that the Appellant's Full Scale IQ score on the IQ test was 69. She stated that the Appellant would not be eligible based on this score because in conjunction with the IQ score one must have significant limitations in their adaptive behavior. She stated that the Appellant's Verbal IQ score was 69 and her Performance IQ score was 74. She stated that the Performance IQ score is in the borderline range and the Verbal IQ score is considered extremely low. She stated that this testing was taken into consideration in rendering her opinion as to the Appellant's eligibility. (A1)

Dr. Shook testified relative to testing done by Margaret Marino in 2005 when the Appellant was 44 years of age. Dr. Shook stated on the test given by Margaret Marino the Appellant obtained a Full Scale IQ score of 66. She stated that the Verbal IQ score was 66 and the Performance IQ score was 74. Dr. Shook stated that this testing does not change her opinion; it is still the same as before. She explained that one has to look at adaptive behavior in conjunction with the IQ

score. She noted that there is a fair amount of scatter in the subtests. She explained that this indicates that some areas are stronger than others. (A2)

13. Sandra Trainor, Executive Director of [REDACTED] testified on behalf on the Appellant. She stated that she was present in the capacity of a neighbor, as part of a neighbor caring about neighbor program and as an advocate for the Appellant. Ms. Trainor raised some concerns about whether the Appellant's responses on the ABAS-II completed in 2004 were accurate. She stated that the Appellant has lived independently for approximately 16 years and has been successful. Ms. Trainor explained that the Appellant was in Special Ed, but that she had not been able to access her school records or IQ testing done prior to age 18. Ms. Trainor stated that she sees the Appellant's adaptive skill deficits in the areas of social, work, and communication. She stated that the Appellant has poor judgment and has difficulty in social situations. She stated that she can speak and has a good vocabulary but that she needs to learn how to function and live in the community. Ms. Trainor stated that the Appellant is not an active participant in the community. She stated that the Appellant can maintain her apartment and does not have difficulty preparing food. Ms. Trainor stated that the Appellant's family is involved in her health care. The witness stated that the Appellant's sister does help her, but her mother is in assisted living and is not able to be of much assistance. Ms. Trainor stated that her assessment of the Appellant's functioning is that she is someone with a lot of skills but is not going to be successful over the long haul. She explained that the Appellant has had support from her family that has helped her to be independent, but her mother has aged and her sister has other commitments. She went on to say that from her perspective, the Appellant is someone who is going to lose her independence. Ms. Trainor testified that she foresees the Appellant losing her job. She stated that the Appellant could very easily get in trouble with the housing authority and get evicted because there's no one who she can go to if problems arise. Ms. Trainor stated that she does not believe that the Appellant could access medical care without her mother's support. She stated that although everything seems to be taken care of right now, she worries about the Appellant's future. She concluded that the Appellant is living independently but is isolated in her community. (D4)

## FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, I find that the Appellant has shown by a preponderance of the evidence that she meets the DMR eligibility criteria. My specific reasons are as follows:

In order to be eligible for DMR supports, an individual who is 18 years of age or older must meet the three criteria set forth at 115 CMR 6.03: (a) she must be domiciled in the Commonwealth, (b) she must be a person with Mental Retardation as defined in 115 CMR 2.01, and (c) she must be in need of specialized supports in three or more of the



following seven adaptive skill areas: communication, self-care, home living, community use, health and safety, functional academics and work. There is no dispute that the Appellant meets the first criteria, and I specifically find that he meets that criterion.

By statute, M.G.L. c. 123B, section 1, a mentally retarded person "is a person who, as a result of inadequately developed or impaired intelligence, as determined by clinical authorities as described in the regulations of the department is substantially limited in his ability to learn or adapt, as judged by established standards available for the evaluation of a person's ability to function in the community." Consistent with its statutory mandate, DMR has adopted the American Association on Mental Retardation (AAMR) 1992 standards as the clinical authority to which it refers in determining whether an individual has "inadequately developed or impaired intelligence". The AAMR standards establish a three-prong test: (a) the individual must have significantly sub average intellectual functioning defined as an IQ score of approximately 70 to 75 or below, based on assessments that includes one or more individually administered general intelligence tests; (b) related limitations in two or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work must exist concurrently with sub average intellectual functioning, and the individual must have manifested the criteria (a) and (b) before the age of 18.

I find that the Appellant is "mentally retarded" as that term is used in statute and regulation for the determination of DMR supports. My specific reasons are as follows:

The results of two IQ tests were submitted by the Appellant. Both Full Scale IQ scores (69 and 66) come within the AAMR definition. Although neither of these scores was obtained prior to the Appellant's 18<sup>th</sup> birthday, there were no objections raised by DMR to these test scores being entered into evidence. In fact, DMR's expert reviewed these scores and stated that she took the scores into consideration when making her eligibility determination. There was nothing in the evidence to suggest that the Appellant's low intellectual functioning was not present prior to age 18. I find that the preponderance of the evidence presented relative to the Appellant's intellectual functioning showed that the Appellant has significantly sub average intellectual functioning and that it is likely that she functioned at this level prior to age 18.

DMR's expert found that the Appellant had related limitations in two of the required adaptive skill areas (leisure and social) and I concur with that finding. However, I find that the preponderance of the evidence showed that that the Appellant has limitations in four additional areas: functional academics, health and safety, self-direction and work.

I also find that the preponderance of the evidence showed that the Appellant is in need of specialized supports in the areas of functional academics, health and safety and work. Documentary evidence provided test scores relative to the Appellant's academic abilities. In reading, spelling and arithmetic, the Appellant scored at the second grade level. It appears from the evidence that in the past the Appellant has been able to live independently because of the supports provided by her family and by the neighbor to

neighbor program. It appears from the evidence that the Appellant's mother is aging and has mobility problems, and her sister has other commitments. It also appears that the neighbor to neighbor program may not be available to the Appellant due to lack of membership. The evidence also raised questions about the Appellant's ability to retain employment and her ability to access health care.

Although Dr. Shook's report states that the Appellant does not have three or more scores on the ABAS-II which show substantial limitations thereby rendering her ineligible for supports, the regulations do not require an individual to have substantial limitations in order to qualify for DMR supports. I find that the Appellant has limitations and is in need of specialized supports in a number of areas.

#### APPEAL

Any person aggrieved by a final decision of the Department may appeal to the Superior Court in accordance with M.G.L. c. 30A [115 CMR 6.34(5)].

Date: January 14, 2005

  
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Marcia A. Hudgins  
Hearing Officer