

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of [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 begun on October 20, 2003 at DMR's Metro North Area Office in Wakefield, Massachusetts and completed on December 15, 2003 at DMR's Walter E. Fernald Developmental Center in Waltham, Massachusetts.

Those present for all or part of the proceedings were:

[REDACTED]

Christopher Pike

Dorrie Freedman

John Higgins, Ed. D

Elna Wayrynen, Ph.D.

Kim LaDue

Appellant

Appellant's Mother

Appellant's Step-father

Student Services, [REDACTED]

Advocate for the [REDACTED] and

Chapter 688 Liaison for Metro North Area

DMR Psychologist

DMR Psychologist

Attorney for DMR

The evidence consists of Documents submitted by DMR numbered D1-6 and approximately 2 hours of oral testimony. The Appellant presented no documents and called no witnesses.

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.
2. The Appellant is a 22-year-old female who resides in [REDACTED] MA. (D1)
3. One (1) evaluation of the Appellant's intellectual functioning before the age of eighteen (18) was entered into evidence (D2)
4. One (1) evaluation of the Appellant's intellectual functioning after the age of

administered over ninety (90) adaptive assessments. She stated that it was her responsibility to gather information relative to a determination of eligibility for DMR services. In this case she collected clinical information, test results and educational information relative to the Appellant. She met with the Appellant and her family and completed the AAA. When all of the information was compiled, Ms. Freedman sent it to the Regional Eligibility Team for a determination of eligibility. She testified that the Regional Eligibility team found the Appellant to be ineligible for DMR services. Ms. Freedman testified that although the Appellant showed significant limitations in three (3) adaptive skill areas: Community Use, Functional Academics and Self-Direction, DMR does not consider Self-Direction, Social Skills or Leisure when determining eligibility. She also testified that she was not sure if cognitive deficits or emotional issues were the cause of the Appellant's limitations. She further testified that she did review [REDACTED]'s assessment and found it to be consistent with her own assessment. Ms. Freedman stated that although the Appellant was living at the [REDACTED] at the time of her adaptive assessment that she did not interview staff at the school. She explained that it is her practice to interview most students at home. She typically meets with the family who has a better sense of where the person was coming from. She also indicated that in completing her work relative to determining an individual's eligibility for DMR services she reviews materials from the individual's school. (D1- 6; testimony of Dorrie Freedman)

11. John Robert Higgins, Ed.D. testified as an expert witness for DMR. Dr. Higgins testified that at the time of the Appellant's eligibility determination he had two (2) responsibilities relative to the process. He was a consultant to the Regional Eligibility Committee and he did testing. He did not participate in the eligibility decision made by the Committee. He testified that he reviewed the IQ testing done by [REDACTED] when the Appellant was sixteen (16) years old. He pointed out the 14 point discrepancy between the Verbal and Performance Scores and the large variation (low score of 3 - high score of 9) in the subtest scores. He testified that such dramatic variations call into question clinical factors or perhaps a learning disability. People with mental retardation tend to have a similarity in their Verbal and Performance scores as well as on subtests. He did not agree with [REDACTED] statement that the results of this test could be a close estimate of the Appellant's mental ability. He did agree however that the Verbal score may be an accurate measure of her verbal ability and that the Performance score may be an accurate measure of her performance skills. Dr. Higgins went on to testify relative to the test that he administered to the Appellant. He noted that there was an even greater discrepancy (22 points) between the Verbal and the Performance scores. He pointed out that the Appellant's score on Comprehension subtest which includes social judgment was very low while her score on the Similarities was just below average. On the Performance Scales he noted that she scored in the superior range on the Picture Arrangement subtest. He explained that it is possible that the Appellant has a learning disability which could be responsible for the difference in her scores or that such discrepancies could be due to depression or the significant medications that she was taking at the time he administered the test. He testified that these medications could have interfered with her true potential. He stated that it was his opinion that the Appellant is not mentally retarded.

FINDINGS AND CONCLUSIONS

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

In order to be eligible for DMR supports, an individual who is 18 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 she meets that criterion. However, I find that she is not mentally retarded as that term is defined in 115 CMR 2.01.

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) 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 not "mentally retarded" as that term is used in statute and regulation for the determination of eligibility for DMR supports. Although there was evidence presented showing that the Appellant received a Full Scale IQ score on one (1) test of 70 to 75 or below prior to age 18, the fourteen (14) point discrepancy between the Verbal (69) and the Performance (83) scores as well as the intratest scatter (3-9) suggests that something other than mental retardation is the cause of the low Full Scale IQ score of 73. The testing done by Dr. Higgins when the Appellant was 18 years old resulted in a Full Scale IQ score of 78 which is not consistent with a diagnosis of mental retardation. Again the very large twenty-two (22) point discrepancy between the Appellant's Verbal and Performance IQ scores and the intratest scatter (3-13) is not consistent with a diagnosis of mental retardation. Although the Appellant does appear to have cognitive

deficits, such deficits do not meet the DMR definition of mental retardation and are likely due to other factors including depression, a learning disability or the medications the Appellant was taking at the time of testing.

While there was evidence presented relative to the Appellant's functional limitations and her need for continuing supports, I did not give consideration to such evidence in reaching my determination because I found that the weight of the evidence presented relative to the Appellant's intellectual functioning showed that the Appellant does not have significantly sub-average intellectual functioning. Because the Appellant failed to show by a preponderance of the evidence that she met the criteria of the first prong of the three-pronged AAMR definition of mental retardation, I did not find it necessary to consider the Appellant's functional limitations in reaching my decision. However, even if I had found that the Appellant met the AAMR definition of mental retardation, I would have found the Appellant ineligible for DMR supports in that it appeared from the evidence that she is in need of specialized supports in only two (2) of the seven (7) adaptive skill areas considered by DMR. To be eligible for DMR supports an individual must be mentally retarded and be in need of specialized supports in three (3) or more of the seven (7) enumerated adaptive skill 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 5, 2004



Marcia A. Hudgins
Hearing Officer