

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF MENTAL RETARDATION

In Re: [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 two-day hearing was held on December 15, 2003 at the Department's Northeast Regional Office, the Hogan Regional Center in Hathorne, Massachusetts. Those present for the proceedings were:

[REDACTED]  
Madalyn Salvaggio  
Kristien Keown  
Veronica Wolfe, M.S.  
John R. Higgins, Ed.D.  
Elina Wayrynen, Ph.D.  
Kim LaDue

Appellant  
DSS Social Worker  
[REDACTED] Case Manager  
Regional Eligibility Manager, DMR  
DMR Psychologist  
DMR Psychologist  
Attorney for DMR

The evidence consists of documents submitted by DMR numbered D1-9 and approximately ninety (90) minutes of oral testimony. The Appellant submitted 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 dated February 25, 2002. (D2)

2. The Appellant is a twenty-year-old woman who resides at the [REDACTED] [REDACTED] in Massachusetts. (D3) She continues to be followed by the Department of Social Services (DSS). (D1)

3. One (1) evaluation of the Appellant's intellectual functioning prior to age 18 was submitted into evidence. Although there were other scores mentioned in various documents, there were no reports introduced relative to those scores so I did not consider them in reaching my conclusion. The evaluation was performed on February 28, 2000 when the Appellant was 16 years of age by Nadine Moll, Psy.D. and Hanya Bluestone, Ph.D., employees of the [REDACTED] School in [REDACTED] Massachusetts. The Appellant was

functional living skills need improvement. She also needs to improve her safety skills.  
(D6)

8. Veronica Wolfe testified that her role in the eligibility process is to make sure that the process presents the information as accurately and conscientiously as possible to a psychologist who makes the decision of eligibility. She explained that the criteria used in determining eligibility is that one has to be a resident of Massachusetts, has to have mental retardation as defined by the AAMR which requires generally speaking an IQ of 70 or below with related deficits in adaptive functioning. DMR also requires that there be adaptive deficits in key areas of functioning. She testified that the Appellant was found ineligible because there were very significant questions raised regarding the validity of the testing. Ms Wolfe went on to explain that although the Appellant was initially found ineligible in February of 2002, there was no request made for an informal conference. Ms. Wolfe testified that because this was a C.688 referral, the area was asked by Central Office to allow the case to be reopened so that the Appellant could exercise her appeal rights. Ms. Wolfe explained that in order for her to have the option to access her assignment rights with the Bureau of Transitional Services the Appellant has to exhaust her appeal rights with DMR, DMH and Mass Rehab Commission. (D1, D2, testimony of Veronica Wolfe)

9. John R. Higgins, Ed.D. gave expert testimony for DMR regarding the Appellant's IQ scores relative to the testing done on February 28, 2000. He testified that while the scores she received on this test: Verbal IQ of 73, Performance IQ of 76 and Full Scale IQ of 72 might in some situations lead to a diagnosis of mental retardation, in his opinion the Appellant was not mentally retarded. He pointed out that in comparing the scores she received on testing done in 1997 (no copy of that report is in evidence) with the scores she received in 2000, significant improvement was shown. He also pointed out that the subtest scatter (low of 2- high of 9) indicated that she had some strengths that would not be consistent with a diagnosis of mental retardation. He also testified that the Appellant's difficult background may be contributing to her low scores. (D4, testimony of John R. Higgins)

10. Elina Wayrynen, Ph.D. gave expert testimony for DMR regarding the Appellant's IQ scores relative to the testing done on December 9, 2003. Although Dr. Wayrynen testified that she had spoken to the Dr. Marino prior to seeing her report, I did not consider that testimony since a copy of Dr. Marino's report was in evidence and it addressed all of the issues relative to a determination of eligibility. Dr. Wayrynen testified that the Appellant's IQ scores on this test put her in the borderline range of intellectual functioning. She explained that on the Performance Subtests the Appellant's index scores showed strengths in Processing Speed which encompasses such tasks as copying symbols and visual scanning and weaknesses in working with information in her head. She also testified that IQ scores can only tell so much in that the tests involve the individual's behavior. She explained that the Appellant's scores tell how she performed on that day and include her ability, motivation, attitude and concentration. She noted that Dr. Marino's report indicated that the Appellant gave up and did not try to answer

questions. Dr. Wayrynen also gave testimony relative to the Adaptive Behavior Assessment System ( ABAS) as set out in Dr. Marino's report. She stated that there was no objective test for adaptive behavior. The only way to get a more accurate picture of the individual would be to have multiple raters. She testified that these scores, all 4s and 5s indicate a very low level of functioning. She pointed out that some of the reasons for the low levels could be emotional or psychiatric issues or whether the Appellant's environment afforded her the opportunity to learn. Finally Dr. Wayrynen testified that based on her review, it was her opinion that the Appellant was not mentally retarded.

When asked how one could tell if someone truly doesn't know the answer to a question or is just giving up, Dr. Wayrynen testified that it depends on the presentation at the time. She stated that she wasn't present when the Appellant was tested so she didn't know but that it was the impression of Dr. Marino that it was more volitional stopping of answering questions. (D3, testimony of Elina Wayrynen)

## FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, I find that the preponderance of the evidence shows that the Appellant 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. I also find that she is a person with Mental Retardation defined in 115 CMR 2.01 and that she is in need of specialized supports in at least three of the enumerated adaptive skill areas.

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 her 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.

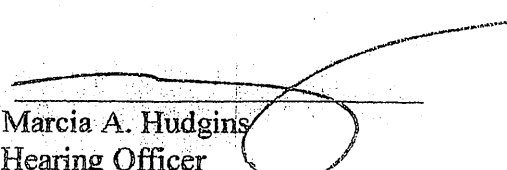
On the basis of the evidence before me, and despite the testimony of two expert witnesses to the contrary, I find that the Appellant has significantly sub average intellectual functioning in that she has IQ scores of 72 and 70 based on test scores received on the WAIS-III and has related limitations in at least two adaptive skill areas: social skills and functional academics. I further find that she manifested such sub average intellectual functioning and related limitations before the age of 18. I was not persuaded by the experts' testimony that the Appellant's scores on the two IQ tests in evidence were not an accurate measure of her abilities. In the report from the testing done in 2000, it was stated by the testers that there is a 95% chance that the Appellant's true Full Scale IQ score falls between 68-77, or the Mentally Retarded to Borderline range of functioning. They went on to say that there were no significant strengths or weaknesses in the subtest scores which comprise the Appellant's global IQ scores. The 2003 test report indicated that the Appellant's IQ scores on that test were consistent with the testing done in 2000. The report concluded that the Appellant's test scores might be an underestimation of her cognitive abilities and that perhaps continued psychiatric treatment as well as continuing to live in a stable environment would aid in the Appellant's overall cognitive functioning. This is possible, but during the more than 3 year period between the two tests it appears that the Appellant was receiving psychiatric treatment and living in a stable environment yet based on her scores of 72 and 70, it does not appear that her overall cognitive functioning improved. The 2003 test report also noted that the Appellant easily gave up and did not try to answer questions. Based on the evidence presented, I find it difficult to determine if the Appellant's failure to answer questions was due to cognitive deficits or other factors. Finally I find that the evidence shows that the Appellant is in need of specialized supports in at least three of the enumerated adaptive skill areas: communication, functional academics and health and safety.

I find that the Appellant "mentally retarded" as that term is used in statute and regulation for the determination of eligibility for DMR supports and is eligible for such supports.

#### 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 6, 2004

  
Marcia A. Hudgins  
Hearing Officer