



The Commonwealth of Massachusetts  
Executive Office of Health & Human Services  
Department of Mental Retardation  
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Lieutenant Governor

Timothy Murphy  
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Gerald J. Morrissey, Jr.  
Commissioner

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November 27, 2005

Mr. E. I. [REDACTED]  
[REDACTED] MA [REDACTED]

Re: Appeal of E. I. [REDACTED]  
Final Decision

Dear Mr. I. [REDACTED]

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 denied.

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  
David Fleischman, Assistant General Counsel  
Victor Hernandez, Field Operations Senior Project Manager  
File

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of [REDACTED] / [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 November 8, 2005 at DMR's Hogan Regional Center in Hathorne, Massachusetts.

Those present for all or part of the proceedings were:

[REDACTED]  
Jean Roomes  
Sandra Brennan  
Patricia Shook, Ph.D.  
Douglas J. White

Appellant  
Program Director, VINFEN Corp.  
DMR Eligibility Coordinator  
Eligibility Psychologist, DMR Region III  
Attorney for DMR

The evidence consists of documents submitted by DMR numbered D1-5 and approximately 1 hour of oral testimony. The Appellant offered no documents and 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, D3)
2. The Appellant is a 21-year-old male who resides in [REDACTED] MA. (D1)
3. One evaluation of the Appellant's intellectual functioning after the age of 18 was entered into evidence. That evaluation mentioned scores from testing done prior to age 18 but there were no test reports interpreting those scores. (D3-4)
4. One Individualized Education Program (IEP) was entered into evidence. (D5)
5. In 2004 when the Appellant was 19 years of age, he received a Neuropsychological Consultation at the Neuropsychological and Psychodiagnostic Testing Center at McClean Hospital in Belmont, Massachusetts. The purpose of the consultation was to aid in treatment planning after his discharge from the Crossroads Program.



During this consultation, the Appellant was given the Wechsler Abbreviated Scale of Intelligence (WASI). The tester, Miles Tarter, Psy.D. reported that on this test, the Appellant obtained a Full 4 score of 96, indicating general aptitude in the average range (39<sup>th</sup> percentile). The Appellant's Verbal IQ score of 87 indicated low average verbal skills and accumulated factual knowledge (19<sup>th</sup> percentile). His Performance IQ score of 106 reflected average fluid reasoning and nonverbal problem solving skills (66<sup>th</sup> percentile). Dr. Tarter noted that the results of the tests probably reflect his current functioning accurately. The report sets out the scores from his previous cognitive evaluations and noted that when comparing his current scores with his previous scores, it appears that the Appellant's verbal and nonverbal skills have steadily and significantly improved relative to his peers since the age of 9. The scores that Dr. Tarter was using for comparison purposes were from tests administered when the Appellant was 9 years of age - Full Scale IQ score of 82 and 15 years of age - Verbal IQ score of 79 and Performance IQ score of 95. In the paragraph labeled Diagnostic Impressions, Dr. Tarter lists Pervasive Developmental Disorder NOS and Schizoaffective Disorder under Axis I. He does not make a diagnosis of mental retardation. (D4)

5 The Appellant's IEP dated April 2, 2004 reveals that he may have deficits in the area of Functional Academics. It states that he takes longer to learn and acquire new information. It also states that he needs complex information broken down into smaller units and a multi-sensory approach. There is a notation that the Appellant will be retaking the MCAS and that he requires a small group setting. It also states that the test should be given untimed. In the section labeled Vocational Goals, the report states that the Appellant uses power tools and is able to work in the area of food preparation with staff assistance. It notes that he will be assembling an employment portfolio. (D5)

7 Sandra Brennan, DMR's Region III Eligibility Coordinator testified that she was familiar with the Appellant's application for DMR eligibility and the finding that he was ineligible as an adult. She noted that the letter sent informing him of this decision was signed by Veronica Wolfe, the Regional Eligibility Manager. (D1)

8 Patricia Shook, Ph.D. testified for DMR as an expert witness. She stated that she reviewed the Eligibility Report prepared by Dr. Wayrynen as well as all of the of the documents relative to the Appellant's application for eligibility, and she agreed with Dr. Wayrynen's recommendation that the Appellant was ineligible for adult DMR services. She stated that she reviewed the Neuropsychological Report of the testing done at McClean and noted that the Appellant's scores did not show that he was mentally retarded. She stated that his Full Scale IQ score of 96 was in the average range of intellectual functioning and that the report from McClean did not give the Appellant a diagnosis of mental retardation. She also stated that although there was no instrument such as the ABAS used to determine the Appellant's adaptive skill level, the Appellant's IEP did not show any limitations in his adaptive skills. (D2-5)

## FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence I find that the Appellant has failed to show by a preponderance of the evidence that he 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) he must be domiciled in the Commonwealth, (b) he must be a person with Mental Retardation as defined in 115 CMR 2.01, and (c) he 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 not "mentally retarded" as that term is used in statute and regulation for the determination of DMR supports.

I find that the Appellant does not have significantly sub-average intelligence. There was no evidence presented to show that the Appellant had IQ scores of 70-75 or below prior to the age of 18. The test scores that were presented were well above 75. While there was some evidence presented relative to the Appellant's functional limitations, I did not give consideration to such evidence in reaching my decision because I found there was no evidence presented showing that the Appellant manifested significant sub-average intellectual functioning prior to the age of 18.



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: November 14, 2005

  
Marcia A. Hudgins  
Hearing Officer