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 held on September 19, 2005 at DMR's Wrentham Developmental Center in Wrentham, Massachusetts.

Those present for all or part of the proceedings were:

[redacted]	Appellant
Eileen Valez, LSW	Social Worker, DSS
Danielle Connors	Bay State Community Services
Laura Haggett	Communities for People-Metro Commonworks
Erin Swanson	Residential Counselor, Meadowridge
Amanda Wray, LICSW	Clinician, Meadowridge
Allegra Munson	Attorney for DMR

The evidence consists of documents submitted by DMR numbered D1-24 and approximately one-half hour of oral testimony. DMR offered no expert 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. (D19-21)[1]
2. The Appellant is a 19-year-old male who resides in [redacted], MA. (D19)
3. The Appellant is under DSS custody (D19)
4. Three evaluations of the Appellant's intellectual functioning before the age of 18 were entered into evidence. (D2, D7, D14)

[1] There are two errors in the Eligibility Report. It states that the Appellant's Full Scale IQ score at age 6 was 84; according to the documentation, it was 83. The report also states that the Appellant's Full Scale IQ score at age 13.8 was 84; according to the documentation, it was 75.

5. The scores from two other evaluations that were performed before the Appellant was 18 years of age were cited in the documents submitted by DMR, but the scores were not accompanied by reports so I while I gave them some consideration, I used them primarily for comparison purposes. (D2,7,14,19)

6. An Independent Living Skills Assessment dated April 19, 2002 was entered into evidence. There was no explanation of the scores accompanying this assessment so I did not take it into consideration when reaching my decision. (D13)

7. A number of other documents were submitted by DMR, some of which discussed the Appellant's educational achievement as well as his psychiatric problems and sexual offending behavior. I found these documents helpful in explaining some of the Appellant's difficulties in organizing his thoughts and staying on task. (D1,D3-12, D15, D17-18)

8. In 1997 when the Appellant was 11 years, 4 months of age, he was evaluated by David M. Callahan, Ph.D., an employee of the Family Service Association of Fall River. Dr. Callahan is a Licensed Clinical Psychologist. Dr. Callahan gave the Appellant the Wechsler Intelligence Scale for Children-3rd Edition (WISC-III). On this test the Appellant received a Verbal IQ score of 82, a Performance IQ score of 68 and a Full Scale IQ score of 73. In his report, Dr. Callahan stated that the Appellant's performance reflects functioning in the borderline range. He noted that the Appellant had been given various forms of the WISC in 1992 and 1993 and that those tests, the Appellant received Full Scale IQ scores of 83 and 84 respectively. He opined that the Appellant's disorganized thought processes may have produced the regression from IQ scores in the mid 80's to a score of 73. He went on to say that the Appellant showed an overall pattern suggestive of the presence of active psychosis. He also stated that the Appellant may have a formal thought disorder. He noted that the Appellant's scores on the Reading and Spelling portions of the Wechsler Individual Achievement Test (WAIT) were fairly good. He stated that the scores were stronger than what would be predicted based on his general cognitive functioning. Dr. Callahan also stated that the Appellant meets the criteria for Attention Deficit Hyperactivity Disorder. He did not offer a diagnosis of mental retardation (D2)

9. In 2000 when the Appellant was 13 years, 8 months of age, he was again evaluated by Dr. Callahan. Dr. Callahan used the WISC-III to test the Appellant's intellectual functioning. On this test the Appellant received a Verbal Score IQ score of 80, a performance IQ score of 74 and a Full Scale IQ score of 75. Dr. Callahan again noted that the Appellant has regressed from his earlier IQ scores which were in the average to low average range to scores more in the borderline range. He stated the Appellant continues to have tremendous difficulty with organization of his thought processes, and gives him a diagnosis of thought

disorder. He stated that the Appellant's attentional functioning is somewhat compromised, but most likely his primary difficulty is due to a thought disorder rather than a neurological deficit. He concluded that ultimately the Appellant's diagnosis will be in the realm of Schizoaffective Disorder. He did not offer a diagnosis of mental retardation. (D7)

10. In 2002 when the Appellant was 15 years, 11 months of age, he was evaluated by Norman E. Weitzberg, Ph.D., a Licensed Psychologist. On this occasion, Dr. Weitzberg gave the Appellant the WISC-III. On this test the Appellant received a Verbal IQ score of 91, a Performance IQ score of 84 and a Full Scale IQ score of 84. Dr. Weitzberg pointed out that this score is 11 points higher than his Full Scale score in 1997. He stated that the Appellant is now within the low average range of intellectual functioning. Dr. Callahan also administered the WRAT-3 which tests academic skills. He stated that the Appellant's lexical skills are fairly impressive. He notes that the Appellant's Reading score places him at a high school equivalency and his Spelling score places him at an 8th grade equivalency. His Mathematics score places him at a 5th grade equivalency. Dr. Weitzberg opined that the Appellant likely has a Mathematics Disorder which is common among individuals with right cerebral hemisphere-based deficits or learning disability. In the section of his report labeled Emotional Functioning, Dr. Weitzberg stated that the Appellant's responses to personality measures administered are highly unconventional and seem to suggest a great deal of rigidity or inflexibility, emotional immaturity, impulsivity, and disorganization, as well as hostility, anger and aggressiveness. He did not offer a diagnosis of mental retardation. (D14)

11. Eileen Velez, LSW testified on behalf of the Appellant. She stated that the Appellant had been involved with the Department of Social Services (DSS) since May of 1991. She stated that his mother had requested voluntary services because of the Appellant's behavior. She also stated that the Appellant had been sexually abused by a babysitter. He was placed in specialized foster care and hospitalized at Pembroke Hospital in July of 1995. He was then placed in a St. Vincent's residential program in Fall River where he stayed for 5 years. She stated he is now residing at Meadowridge. She stated that developmentally he is functioning on a much lower level than a 19 year old. She also stated that he is part of the Commonwealth's Turning Twenty-two, Chapter 688 program. She stated that his earlier test scores are in the high 60's. She stated that he presents much younger than a typical 19 year old.

On cross-examination, the witness was unable to produce any evidence of an IQ test where the Appellant received a Full Scale IQ score of 70 or below although she did point to a Performance score that was 68. She stated that she did submit such documentation but was not able to point it out at the hearing.

FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence and despite his need for continuing supports, 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. The Appellant received Full Scale scores of 73 and 75 on two IQ tests administered prior to age 18. However on both occasions, the tester noted the likelihood of the presence of a thought disorder which he believed may have caused the Appellant's disorganized thought processes to produce the regression from two earlier Full Scale test scores. The Appellant's most recent Full Scale IQ score of 84 appears to be back to its baseline and falls in the low average range. I find that the Appellant's mental health issues and learning disabilities interfere with his intellectual functioning and that it likely that his lower test scores were compromised by his disorganized thoughts rather than cognitive

deficits. It appears that a structured environment and appropriate medications help the Appellant to perform at a higher level.

While there was some evidence presented relative to the Appellant's functional limitations and his 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 he 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. Functional limitations can result from a variety of conditions including the presence of a thought disorder. Unless the weight of the evidence shows that an individual has significantly sub average intellectual functioning, it is not necessary to give consideration to such functional limitations.

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 17, 2005

Marcia A. Hudgins
Hearing Officer