

The Commonwealth of Massachusetts

Executive Office of Health & Human Services Department of Mental Retardation 500 Harrison Avenue Boston, MA 02118

Mitt Romney
Governor
Kerry Healey
Lieutenant Governor

Timothy Murphy Secretary

Gerald J. Morrissey, Jr. Commissioner

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November 30, 2006

Nisha Koshy Cocchiarella Fletcher, Tilton & Whipple, P.C. 370 Main Street Worcester, MA 01608

Re: Appeal of

Final Decision

Dear Attorney Cocchiarella:

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 approved.

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

File

GJM/ecw

cc: Marcia Hudgins, Hearing Officer
Terry O'Hare, Regional Director
Marianne Meacham, General Counsel
Damien Arthur, Regional Eligibility Manager
John Geenty, Assistant General Counsel
Victor Hernandez, Field Operations Senior Project Manager
Ms.

COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF MENTAL RETARDATION

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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 28, 2006 at DMR's Worcester Area Office in Worcester, Massachusetts.

Those present for all or part of the proceedings were:

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John	U. U	enty	, JI.			٠.

Appellant's Mother
Appellant's Father and Permanent Guardian
Psychologist
Attorney for the Appellant
DMR Psychologist
Attorney for DMR

The evidence consists of documents submitted by the Appellant numbered A1-8, documents submitted by DMR numbered D1-6 and approximately 4 hours of oral testimony. Both DMR and the Appellant provided 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

- This Appeal is based on the Appellant's denial of eligibility for DMR services.
 (D6)
- The Appellant is a 31-year-old female, who resides with her parents in Clinton, Massachusetts. (testimony of C. Tencati)
- 3. Two evaluations of the Appellant's intellectual functioning before the age of 18 were entered into evidence. (A6, A8)
- 4. Three evaluations of the Appellant's intellectual functioning after the age of 18 were entered into evidence. (A4-5, A7)

- An assessment of the Appellant's adaptive functioning was entered into evidence. (D1)
- 6. A Permanent Decree of Guardianship on the basis of mental retardation was entered into evidence. I did not give great weight to this information in making my decision because the criteria for determining mental retardation relative to guardianship are different from the criteria set out in the AAMR definition. (A1)
- 7. An Eligibility Report authored by Richard Costigan, Psy.D. was entered into evidence. (D6)
- 8. A psychological evaluation completed by Robert D. Aron, Ph.D. in April of 1984 was entered into evidence. (D2)
- 9. A report from Children's Hospital in Boston, Massachusetts dated March 6, 1985 was entered into evidence. (D4)
- A Criminal Responsibility Report authored by Emily S. Frank, Ed.D. dated October 29, 1993 was entered into evidence. (D3)
- 11. On May 31, 1991 when the Appellant was 15 years 7 months of age, she was given the Wechsler Intelligence Scale for Children-Revised (WISC-R). The Record Form which was not accompanied by a written report listed the Appellant's scores as follows: Verbal IQ score-74, Performance IQ score-86, Full Scale IQ score-78. There was no indication of who gave the test or his/her level of education. No information relative to the test conditions or the validity of the test scores was given. (A8)
- 12. In November of 1991 when the Appellant was 16 years 1 month of age, she was tested by Andrea Barnes, Ph.D., a Licensed Psychologist employed by the Herbert Lipton Community Mental Heath Center, Inc. On this occasion, Dr. Barnes tested the Appellant using the Wechsler Intelligence Scale for Children-Third Edition (WISC-III) Dr. Barnes noted that the newer test, the WISC-III which was a revised and restandardized version of the WISC-R tended to produce scores approximately 6 points lower than those on the WISC-R. Dr. Barnes stated in her report that during the structured intellectual testing, the Appellant was friendly and cooperative. On this occasion, the Appellant received a Verbal IQ Score of 63, a Performance IQ Score of 71 and a Full Scale IQ score of 64. In the Summary and Recommendations portion of her report, Dr. Barnes states that the Appellant has specific memory and word retrieval deficits which significantly interfere with her ability to perform intellectual tasks. The tester also pointed out in her report that the Appellant's IQ scores varied widely depending on the nature of the task, and her overall IQ sores do not adequately describe the range of her abilities, nor the specific learning deficits she displayed in the areas of word retrieval and memory. (A6)

- 13. On November 11, 1993 when the Appellant was 18 years 1 month of age, she was evaluated by Peter A. Szuch, Ed.D. using the Wechsler Adult Intelligence Scale-Revised (WAIS-R). On this test the Appellant received a Verbal IQ score of 72, a Performance IQ score of 76 and a Full Scale IQ score of 73. Dr. Szuch stated in his report that the Appellant remained goal directed throughout the testing and that she put forth a genuine and sincere effort. He further stated that he believed that the test results were a valid indicator of her current ability. His report states that she is functioning in the borderline range of intellectual functioning. He also pointed out that there was no statistically significant discrepancy between her verbal and her performance scores. (A7)
- 14. On January 29, 1996 the when the Appellant was 20 years 4 months of age, she was tested by Robert D. Aron, Ph.D. In his report, Dr. Aron stated that the purpose of the assessment was to aid in programming and after care planning. In the section of his report labeled Behavioral Observations, Dr. Aron notes that the Appellant tried to do her best on all tasks. He also noted that she did not give up easily and in some instances she got additional items correct due to her continued trying. On this occasion, the Appellant was given the WAIS-R. The results of this test are as follows: a Verbal IQ score of 72, a Performance IQ score of 80 and a Full Scale IQ score of 75. Dr. Aron also administered the Woodcock Johnson Psychoeducational Battery-Revised (WJ-R) to the Appellant. Her lowest scores were in Passage Comprehension and Dictation - grade level equivalents of 4.6. Her highest score was in Writing Samples - grade level equivalent of 6.6. Dr. Aron pointed out that although the Appellant reads at a 5.8 level; her understanding of what she has read is 4.6, not quite high enough for understanding the average daily newspaper. He also noted that all of her standard scores on the WJ-R are at a level that would be predicted by her Full Scale IQ score of 75 so that there is no suggestion of a learning disability. Dr. Aron's diagnosis is borderline intellectual functioning. (A5)
 - 15. On February 16, 2005 when the Appellant was 29 years of age, she was tested by Thomas A. Tashjian, Ph.D. Dr. Tashjian states that the purpose of the evaluation was to elucidate factors underlying her apparent lack of motivation, social withdrawal and resistance to prior treatment. On this occasion, Dr. Tashjian administered the WAIS-III to the Appellant and calculated percentiles relative to 10 adaptive functioning domains. On the WAIS-III, the Appellant received a Verbal IQ score of 69, a Performance IQ score of 77 and a Full Scale IQ score of 70. He noted that there was no evidence of depression or emotional disorders or of anxiety or impulsivity. He also noted that there was some evidence of left sided organic problems since the Appellant showed a Verbal scale/Performance scale difference which is consistent with left brain organic problems. He did not feel that a specific language disorder was indicated. The Appellant's adaptive behavior percentiles were as follows: Communication - 63rd percentile, Self-care - 84th percentile, Home-living- 84th percentile, Social - 25th percentile, Community Use - 63rd percentile, Self Direction - 5th percentile, Health and Safety - 50th percentile, Functional Academics, 91st percentile, Leisure - 63rd

percentile and Work – 9th percentile. Dr. Tashjian highlighted the areas of Communication, Community Use, Self Direction, Health and Safety and Work as areas where the Appellant has significant deficits in adaptive behavior. In the section labeled Summary, Dr. Tashjian states that the Appellant is functioning in the mild range of mental retardation. He also states that she has significant deficits in adaptive behavior thereby rendering her mentally retarded. (A4)

- 16. On April 5, 2005, an Adaptive Behavior Scale Residential and Community Second Edition (ABS-RC: 2) was completed relative to the Appellant's adaptive behaviors. (D1)
- 17. On March 1, 1985 when the Appellant was 9 years 5 months of age, she was evaluated at Children's Hospital in Boston. Dr. Lydia Sarro, M.D. did part of the evaluation and authored the report. In her Summary, Dr. Sarro noted that the Appellant had marked delays in the areas of receptive language, language retrieval and expressive language. She stated that visual memory and temporal sequential organization were areas of marked delay. She also stated that the Appellant's overall academic skills were considerably delayed and significant receptive and expressive language problems were evident. Again she pointed out that major problems were noted in areas of sequential organization as well as in auditory analysis and visual memory. Dr. Sarro recommended that the Appellant receive a full CORE evaluation and that she be placed in a small group full-time language-based program for children with learning difficulties. She stated that the Appellant should not be placed in a program with children who have significant emotional problems, retardation or physical handicaps. (D4)
- 18. On October 22, 1993 when the Appellant was 18 years of age she was evaluated for criminal responsibility by Emily S. Frank, Ed.D. Following her evaluation, Dr. Frank recommended that the Appellant be placed in a residential treatment facility. She stated that this would provide the Appellant with the opportunity to live in a highly structured environment with clear rules and regulations. She also stated that it would be not be possible to provide this level of structure at home. She concluded that the Appellant was in need of individual, group and family treatment as well as special education services. Dr. Frank did not administer any IQ tests to the Appellant. She offered a diagnosis of borderline personality disorder. (D3)
- 19. The DMR Eligibility Report authored by Richard Costigan, Psy.D. noted that the Appellant's mother had completed an ABAS which yielded a GAC (General Adaptive Level) of 59. He also noted that the Appellant presents with a completed set of cognitive challenges combined with a possible personality disturbance. He goes on to say that the profile is consistent with an individual functioning in the borderline range of intellectual functioning. In the Recommendations section of the report, Dr. Costigan states that the Appellant does not meet criteria for Adult DMR services. He also states that her adaptive functioning is diminished due to emotional factors. (D6)

festified on behalf of the Appellant. She testified that the 20. she and her husband cared for the Appellant as a foster child before adopting her at age 5. She stated that the Appellant's biological mother may have used alcohol stated that the Appellant began and/or drugs during her pregnancy. Mrs. having difficulty in nursery school and was given speech therapy. She testified that the Appellant did not begin to speak until she was in Head Start. She also stated that the Appellant was in special education throughout her entire education spending most of her time in the resource room. After an incident where she tried to stab her brother, the Appellant was removed from the home, sent to Taunton State Hospital and eventually to the Latham School on Cape Cod until she turned stified that the Appellant did very well at the Latham School. In October of 1997, the Appellant moved out of the Latham School and into an apartment in Hyannis. Although the Latham School helped the Appellant with her transition, she did not last for more than one month in the apartment. Mrs. testified that from 1997 until August of 2004, the Appellant lived in a number of different places but was unable to sustain herself in these various living arrangements. Since August of 2004, the Appellant has been living with her parents. She is currently receiving SSDI on the basis of her father's work history. She also receives Mass Health and Medicare Parts A&B. She has been under guardianship on the basis of mental retardation since 1994. testified that the Appellant does nothing without prompts. She

Mrs. _______testified that the Appellant does nothing without prompts. She attends Westwinds, a clubhouse program. Mrs. ________trated that the Appellant's hygiene skills are poor. She doesn't help with food preparation or laundry. She has very poor safety skills and exercises poor judgment in forming relationships. She chooses people who will use her and has been in abusive relationships. She is on a number of medications. Currently the Appellant is receiving no state services.

On cross-examination, the witness testified that the Town of Clinton paid for the Appellant's placement at the Latham School. During that time she had an IEP and they received reports on a regular basis; however, no transition services were ever discussed. Ms.

[estified that the Appellant applied to DMH and was denied services.]

Mrs. testified that although the Appellant has been able to get jobs, she is not able to keep a job.

21 Thomas A. Tashjian, Ph.D. testified as an expert on behalf of the Appellant. He stated that he had done DMR eligibility evaluations from 1990-1994. He is currently engaged as a fee for service psychologist. He testified that he evaluated the Appellant on February 16, 2005. He stated that he evaluated her using the WAIS-III (A3-4)

Dr. Tashjian testified that he found no support for depression or for attention or impulsivity issues relative to his testing of the Appellant. He noted a significant difference between the Verbal IQ score of 69 and the Performance IQ score of 77. He noted the same difference present on the test taken by the Appellant in 1991 when she obtained a Verbal IQ score of 74 and a Performance IQ score of 86. He pointed out that the same distribution of scores was present in the testing done a few months later, but he could not interpret that test due to the issue of the 'practice effect''. Dr. Tashjian testified that the scores that the Appellant received on the WAIS-R which she took in 1996 were not valid. He stated that the test should not have been used at that time since there was a new test, the WAIS-III available at that time. He did state that the distribution of scores was still the same as in prior testing. Dr. Tashjian pointed out that the WAIS-R given to the Appellant in 1993 produced the same patterns; however the comprehension subtest was not administered. (A4-A8)

Dr. Tashjian testified that he believes that prior testing supports eligibility for DMR services. He stated that he did not know the results of the Appellant's previous IQ tests prior to testing the Appellant. He also testified that he supports the Children's Hospital report and agreed that the Appellant needs structure and behavioral support. He noted that she did best at the Latham School which employed a level system. (D4)

On cross-examination, Dr. Tashjian stated that the AAMR definition of mental retardation encompasses IQ scores of up to 70 and requires deficits in adaptive functioning in three or more areas. He testified that in his opinion the Appellant's current deficits are consistent with her prior deficits and that one can develop a timeline showing that the onset of her deficits was before the developmental period. Dr. Tashjian testified that if he were to look at IQ scores in making a determination relative to DMR eligibility, he would look at the Appellant's 1993 scores. He agreed that none of the Appellant's scores from the 1991, 1993 or 1996 IQ tests were 2 standard deviations below the mean. (A 5, 7-8)

Dr. Tashjian testified that adaptive behavior testing is notoriously unreliable. He explained that the AAA results in a percentile in each of 10 areas identified in the AAMR and the DSM definitions. He further explained that the percentiles used in his report correspond to the number of people who would have received the Appellant's score or higher. He stated that significance is defined by a percentile score of 70. He stated that the percentile score is compared to that of the general population; it is not in comparison to a mentally retarded group or other special population. In explaining the discrepancy between her low score on the Reading Comprehension section of the adaptive behavior examination booklet and the WJ-R, Dr. Tashjian opined that although according to the WJ-R the Appellant's reading comprehension is at the 4⁶ grade level, she may not read at that level at home. She may need to be in a test environment in order to achieve that level of

¹ The test taken by the Appellant in November, 1991 was not considered due to the closeness in time relative to the administration of the test given in May, 1991 thereby rendering the test invalid. (A6)

reading comprehension. He explained that this is a home and community assessment, not a school based assessment. (A5, D1)

He stated that the Appellant's functional deficits are due to her cognitive limitations. He stated that her cognitive deficits could be an explanation for all of her adaptive deficits. He testified that he doesn't believe that the Appellant is mentally ill. He noted that the Appellant has received many diagnoses and that not all of them can be right. He stated that he was aware of the 1993 criminal responsibility report and agreed that the report put forth the diagnosis of personality disorder which is a psychiatric diagnosis. (A4-5, D1)

On redirect Dr. Tashjian testified that certain IQ tests are invalid and based on flawed testing, such tests can't be interpreted. These flawed tests result in test administration error. Dr. Tashjian testified that he believes that his testing of the Appellant was not flawed and is confident that her deficits existed since 1985 pointing out the consistency in her strengths and weaknesses in prior testing when compared to the testing he did in 2005. (A4, D4)

- 22. Sestified on behalf of the Appellant he stated that the Appellant puts a strain on everyone. He stated that she needs supervision.
- 23. Richard Costigan, Psy.D. testified as an expert witness for DMR. He stated that is employed as the Regional Psychologist and works in the Worcester Area Office. He stated that an Eligibility Specialist had been assigned in the Appellant's case to gather pertinent documents. He stated that an eligibility determination was then made based on the documentation provided. (D5)

Dr. Costigan reviewed the test administered to the Appellant in 1996 when she was 20 years 4 months of age. He stated that her Full Scale IQ score on this test was at the upper end of the borderline range of intelligence. He testified that the test given in November of 1991 was invalid but that the test given in May of 1991 was valid stating that nothing would make it invalid. He reviewed the scores that the Appellant received on the test administered in 1993 when she was 18 years 1 month of age stating that her Full Scale IQ score on that test was 73. He agreed that the scores the Appellant received on the WAIS-R that she took in 1996 were higher than they would have been had she been given the WAIS-III. He reviewed the scores that the Appellant received on the test administered by Dr. Tashjian in 2005 noting that the Appellant's Full Scale IQ score on this test was 70. (A4-8)

Dr. Costigan stated that the criteria for receiving DMR services are that one must be a resident of the Commonwealth, have cognitive deficits that are two standard deviations below the mean and have significant deficits in adaptive functioning which again means that the deficits are two standard deviations below the mean.

Dr. Costigan reviewed the Roxbury Court Clinic's evaluation noting that the examiner found the while the Appellant fulfilled the criteria for antisocial

personality disorder, in her opinion the description of borderline personality disorder better captured the Appellant. (D3)

Dr. Costigan reviewed the ABS evaluation and noted that adaptive deficits must be two standard deviations below the mean. He also stated that he did not understand Dr. Tashjian's percentage rankings and pointed out that an individual's deficits have to be in comparison with the general population. (A4, D2)

Dr. Costigan commented on Dr. Tashjian's evaluation of the Appellant asserting that evaluations that occur outside the developmental period are not valid for determining the presence of mental retardation. He stated that the most reliable testing would be that done prior to age 18. (A4)

Dr. Costigan stated that emotional problems as well as cognitive issues can affect adaptive functioning. He testified that psychosis and depression can have an impact on adaptive functioning. He stated that one cannot rule in or rule out mental illness without a structured interview with the individual. Dr. Costigan stated that he looked at all of the Appellant's test scores when reaching his determination of ineligibility with the exception of the test score that she received on the WISC-III that was administered shortly after she had taken the WISC-R.

On cross examination Dr. Costigan stated that even though there was no written report accompanying it, he considered the test given to the Appellant in May of 1991 to be valid. He could not explain why the Appellant was given an 8 on the picture arrangement subtest when she did not take that portion of the test. He explained that the picture arrangement subtest requires that the Appellant put pictures in order to tell a story. He agreed that if the Appellant were to have received the same score (3-6) that she had previously received on the picture arrangement subtest; she would have scored lower than the Full Scale IQ score of 78 that she received. In fact, she could have received a 75 or less. (A4-5, A7-8)

Although Dr. Costigan agreed that it was possible that in coming to a determination relative to the Appellant's ineligibility, he may have focused too much on behavioral issues and under estimated her cognitive impairments, he stated that decisions that he makes about eligibility are data driven. He looks for themes and things that are generally consistent across the board as well as things that might be having an impact.

On redirect, Dr. Costigan was asked to explain the scores: 70-75. He stated that the scores were taken directly from the AAMR. He explained that if you look to the DSM-IV (the Diagnostic and Statistical Manual) when making a diagnosis, it specifically states that the AAMR's 70-75 took into account the standard error of measurement and that the principle that would still hold true for making a definitive diagnosis of mental retardation would be 2 standard deviations below the mean.

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 2.01², 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. I find that the Appellant meets all three criteria and as such is eligible for DMR supports.

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 preponderance of the evidence showed that the Appellant has significant sub-average intellectual functioning defined as an IQ score of approximately 70 to 75. Although DMR's expert testified that to make a definitive diagnosis of mental retardation an individual's IQ score would have to be 2 standard deviations below the mean, this is not what the AAMR definition states. Because DMR has adopted the AAMR standard, the score of 70-75 must be applied.

² DMR changed its definition of "mental retardation" and the incorporated the definition of "significantly sub-average intellectual functioning" effective June 2, 2006. Because the Appellant's application for DMR supports was filed before June 2, 2006, the earlier standard applies.

Although evidence was presented relative to an IQ test given to the Appellant when she was 15 years 7 months of age giving a Full Scale IQ score of 78, I did not give great weight to this score for several reasons. First, there was no indication of who gave the test or the individual's level of education and/or licensure. Second, there was no report accompanying the test scores so that no information was available relative to test conditions or the observations of the tester. Third, the Full Scale IQ score was based on an estimate of what the Appellant would have received on the Picture Arrangement subtest had she taken that portion of the test. The estimate was at least 2 points higher than the Appellant's previous scores on this subtest calling into question the validity of the Full Scale score. In any event, it is likely that the Appellant's Full Scale IQ score would have been lower than 78 had she taken the Picture Arrangement subtest and performed as she had on other administrations of that subtest.

I did not consider the Appellant's IQ scores on the evaluation done when she was 16 years, 9 months because that test was administered too soon after the pervious IQ test had been given thereby rendering it invalid. Both parties agreed that the test score should not be considered.

I gave great weight to the Full Scale IQ score of 73 set out in the report of Peter A. Szuch, Ed.D. This score was obtained on a WAIS-R only one month after the Appellant had reached her 18th birthday. The tester explained the test conditions and stated that the results of the test were a valid indicator of the Appellant's current ability. Because the test was given so close to the cut-off point for the developmental period, I considered it the best evidence of her intellectual performance during that period given the problems with the previous two tests.

Although the Full Scale IQ score of 75 obtained by the Appellant when she was 20 years 4 months of age meets the AAMR definition, and I did give it some consideration, I did not give great weight to this score in that it was over 2 years beyond the Appellant's developmental period. Additionally I find that the test, the WAIS-R was not the test that should have been given. A new test the WAIS-III was available and was the test that should have been used. Had the newer test been given, it is likely that the Appellant would have achieved a lower score.

I gave some weight to the Full Scale IQ score of 70 obtained by the Appellant when she was 29 years of age even though it was far beyond the developmental period in that it produced a similar result when compared to the Appellant's score when she was 18 years 1 month of age. This score was explained by the tester and put into context during his testimony. Additionally there were no concerns raised about the validity of this test.

In making my determination relative to the Appellant having significant sub-average intellectual functioning prior to the age of 18, I also considered corroborating evidence including the Children's Hospital Evaluation completed when the Appellant was 9 years 5 months of age and Constance Tencati's testimony concerning the Appellant's functioning during the developmental period. The Children's hospital report pointed out that the Appellant had marked delays in a number of areas and that her overall academic

skills were considerably delayed. It told of the Appellant's early difficulties with speech and stated that the Appellant had spent her entire educational career in a special education resource room. Although Emily S. Frank of the Roxbury Court Clinic evaluated the Appellant when she was 18 years of age and offered a diagnosis of borderline personality disorder, she did not perform any intelligence testing and made no diagnosis based on the Appellant's intellectual functioning. She did however state that the Appellant was in need of special education services as well as a highly structured environment with clear rules and regulations.

I find that the preponderance of the evidence showed that the Appellant has related limitations in at least 2 of 10 adaptive skill areas. I find that these limitations were present prior to age 18 and continue into the present. I base this finding The Appellant's mother's testimony, the results of the adaptive functioning survey set out in Dr. Tashjian's report and the Department's Eligibility Report. Although DMR argued that the Appellant's functional deficits may be due to psychological or emotional problems, I find that her impaired intelligence is the primary cause of such deficits.

I also find that the Appellant is in need of specialized supports in at least 3 of the 7 adaptive skill areas including community use, health and safety and work. The Appellant currently lives with her parents. If she were to live in a more independent setting, it is possible that she would need supports in other 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: November 18, 2006

Marcia A. Hudgins Hearing Officer