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Executive Office of Health & Human Services
Department of Mental Retardation
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Commissioner

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January 4, 2006

[redacted], MA [redacted]

Re: Appeal of J[redacted] G[redacted]
Final Decision

Dear Mr. G[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 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

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 J[redacted] G[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 22, 2005 at DMR's Hogan Regional Center in Hathorne, Massachusetts.

Those present for all or part of the proceedings were:

J[redacted] G[redacted]	Appellant
R[redacted] G[redacted]	Appellant's mother
J[redacted] G[redacted]	Appellant's father
Deborah Crone	EMARC Educational Advocate
Veronica Wolfe	DMR Regional Eligibility Manager
Sandra Brennan	DMR Eligibility Coordinator
Margaret Marino, Ph.D.	Expert Witness for DMR
Patricia Shook, Ph. D.	Psychologist III, DMR
David B. Fleischman	Attorney for DMR
Douglas J. White	Attorney for DMR

The evidence consists of a document submitted by the Appellant numbered A1, documents submitted by DMR numbered D1-11 and approximately 2 hours of oral testimony. The Appellant 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)

2. The Appellant is a 21-year-old male who resides in [redacted] MA. (D1)

3. Five evaluations of the Appellant's intellectual functioning before the age of 18 were entered into evidence. I did not give great weight to the evaluation done in 1996 because the test report stated that the IQ scores were estimates. I did not

give great weight to the evaluations done in 1988 and 1991 because there were no test scores reported. (D5, D6, D8, D10-11)

4. Two evaluations of the Appellant's intellectual functioning after the age of 18 were entered into evidence. (D3-4, A1)

5. One Inpatient Discharge Summary and one Neurorehabilitation Program Outpatient Consultation were entered into evidence (D7, D9)

6. DMR objected to the Appellant's evaluation performed on August 26, 2005 because they had not been provided a copy prior to the hearing. The Appellant's father explained that they had received the report less than a week before the hearing. DMR's expert witness was given an opportunity to review the report prior to testifying. The report was allowed into evidence as it was deemed relevant to the issues of eligibility.

7. The parties stipulated that the Appellant has many adaptive deficits which meet the requirements of the Department's definition of mental retardation. They also stipulated that he is in need of specialized supports due to his adaptive deficits. The only issue therefore is whether or not the Appellant has significant sub average intellectual functioning.

8. In 1988 when the Appellant was 4 years, 4 months of age, Lois Carra, Ph.D. evaluated the Appellant. She tested him using the Stanford-Binet Intelligence Scale, 4th edition (Stanford-Binet). No test scores were reported. In her report, Dr. Carra stated that the Appellant's performance was affected by his low frustration level. She also stated that his overall intelligence level could only be estimated at the time. He was at the four year old level with expressive one word vocabulary, but his verbal comprehension was estimated to be at the late two year or early three year level. Dr. Carra concluded that the Appellant at age 4 years, 4 months was delayed approximately one year in fine motor and receptive language skills and slightly more delayed in expressive language and social development. She also stated that his gross motor skills and vocabulary of single words were closer to age level. She went on to say that compared to the observations and testing of a year ago, the Appellant had made significant progress in closing his developmental gaps. She also said that he was still behind in some areas and that the reason for the delay was not clear. She opined that early deprivation may be the reason for his delays, but suggested that he be examined by a pediatric neurologist to rule out the possibility of organic problems. Finally she stated that it was too soon to predict whether the Appellant would completely close the gap between his performance and his chronological age. Dr. Carra stated that the Appellant's young age and the many variables and unknowns in his early development made it impossible to label him as a child who would remain delayed. (D11)

9. In 1991 when the Appellant was 6 years, 8 months of age, he underwent a neuropsychological evaluation. Martha A. Collette, Ph.D., a neuropsychologist did the evaluation and submitted a report of her findings. She administered the Wechsler Intelligence Scale for Children-Revised (WISC-R). In the section of her report labeled General Intellectual Functioning, Dr Collette stated that valid Verbal, Performance, and Full Scale IQ scores could not be computed because the Appellant would only participate in four of the ten subtests and even on those, he was inconsistent. She stated that estimates based on his highest score suggested that his potential cognitive ability is solidly average or above. Although he did score 12 on the similarity subtest which Dr. Collette states is above average, his scores on a tests of information and comprehension were both 4. She commented that the scaled score of 4 on the comprehension subtest showed genuinely limited understanding of language, internalization of social norms and conventions appropriate for a boy of his age. She went on to say that the Appellant had not established the basic psychological and learning repertoires necessary for academic, social and interpersonal well functioning. She opined that with intensive intervention, the progress for the Appellant was good given his possibly strong intellectual functioning, his social and interpersonal appropriateness and directness for his age. (D10 – page 1 of this exhibit was not submitted)

10. In 1992 when the Appellant was 8 years, 3 months of age, he was given the Stanford-Binet and the Wechsler Intelligence Scale for Children-Third Edition (WISC-III) On the WISC –III he was given only the Picture Completion, Picture Arrangement, and Object Assembly subtests. The tests were administered by Jennifer L. Clarke-Hitt, M.S., Psychology Intern who was supervised by John Anderson, Jr. Ed.D. These tests were administered at the Franciscan Children's Hospital during an inpatient admission which had been recommended by Norman Bass, M.D. to facilitate and allow appropriate interventional programs. The test report states that the Appellant was very distractible but was motivated to work for stickers. He fidgeted constantly and was occasionally noncompliant. Verbal cues or removal of attention succeeded in getting him back on track. On the Stanford-Binet, the Appellant obtained a test composite of 60. The report states that this score places him in the mildly retarded range of intellectual functioning. It also states that he exhibited deficits in reasoning, judgment and problem solving. Ms. Clarke-Hitt states that the Appellant demonstrated a relative (her emphasis) strength on subtests assessing verbal comprehension, however it should be emphasized that his verbal skills are still delayed as he performed in the borderline retarded range on such tasks. On the WISC-III Object Assembly subtest, the Appellant was able to identify what object he was trying to put together but could not use this information to guide his efforts. On the Pattern Analysis subtest, the Appellant used a trial and error method picking up blocks and dropping them on the table until the side he needed came up. The report states that the Appellant's drawings were in the 1st percentile rank for his age. The report's paragraph entitled Clinical Formulation states that the Appellant's behavior patterns meet the criteria for Pervasive Developmental Disorder, Not Otherwise Specified (PDD

NOS). It also states that given his results on the Stanford-Binet, he could be given a diagnosis of mental retardation of mild severity. (D8)

11. In 1996 when the Appellant was 12 years, 0 months of age, he was given the WISC-III. The evaluation was requested by the Appellant's mother to be used as part of a three year evaluation for the [redacted] Massachusetts Public Schools. Anne Marie Lasoski, Psy.D., a clinical neuropsychologist employed by the Braintree Rehabilitation Pediatric Clinic at Lynnfield, Massachusetts administered the test and reported on her findings. Dr. Lasoski stated in her report that the Appellant exhibited a very short attention span, requiring much redirection over time. She also stated that he had little awareness of such difficulty and limited ability to engage in self-regulation. On this test the Appellant achieved and estimated Verbal IQ score of 75, an estimated Performance IQ score of 58 and Full Scale Score of 64. She noted that there was scatter among subtests as well as within subtests and opined that such scatter was consistent with inattention as well as areas of skill deficit. Dr. Lososki concluded that the Appellant's Neuropsychological impression is of that of a Pervasive Developmental Disorder with autistic features (her emphasis). She stated that his estimated IQ scores fell in the borderline range and below. (D6)

12. When the Appellant was 13 years, 5 months of age, he was tested at the Massachusetts General Hospital by the Chief of Psychology, Dennis K. Norman, Ph.D. Dr. Norman administered the WISC-III. His Cognitive Intellectual Assessment states the results on this administration were entirely consistent with the Appellant's previous neurological exam performed in 1996 by Ann Marie Lasoski. He goes on to state that the Appellant's general cognitive ability is within the intellectually deficient range of intellectual functioning. The report states that the Appellant's Full Scale IQ score on the WISC-III was 69 with a 90% confidence live equaling 66-75. Dr. Norman states that the Appellant would have a great deal of difficulty in keeping up with his peers in a wide variety of situations that require age-appropriate thinking and reasoning abilities. He also reported the Appellant's Verbal IQ score – 74 and his Performance IQ score – 76. Dr Norman's report states that the Appellant's ability to sustain attention, concentrate and exert mental control is borderline. He also states that the Appellant's weak performance on the Vocabulary and Comprehension subtests were far below that of most of his peers, but entirely consistent with a language disorder e.g. autism. Dr. Norman also administered the Wechsler Individual Aptitude Test to the Appellant. Dr. Norman stated that the Appellant's scores on this test were commensurate with his overall cognitive ability in all areas tested. In his Summary, Dr. Norman states that the Appellant is intellectually limited as demonstrated on his previous neuropsychological assessment and supported by the current testing. He states that the Appellant's level of functioning is consistent with that encountered in mild mental retardation, but notes that there is an issue of weak articulation and a specific strength of visual spatial organization which is within the average range. (D5)

13. In 2004 when the Appellant was 19 years of age, he was evaluated by Margaret Marino, Ph.D. Dr. Marino administered the Wechsler Adult Intelligence Scale-III (WAIS-III). On this test the Appellant received a Verbal IQ score of 79, a Performance IQ score of 78 and a Full Scale IQ score of 77. Dr. Marino states that these scores fall within the borderline range of intellectual functioning. She stated that during the test administration the Appellant appeared to be making his best effort. Dr. Marino noted that these test scores represent an improvement over his previous testing reports. (D3-4)

14. In 2005 when the Appellant was 21 years of age, he was evaluated by Lauren E. Pollak, Ph.D., a clinical neuropsychologist employed by Massachusetts General Hospital. Dr. Pollak administered the WAIS-III. On this test the Appellant received a Verbal IQ Score of 81, a Performance IQ Score of 72 and a Full Scale IQ score of 75. Dr. Pollak noted that while the Appellant appeared to put forth adequate effort on the tests she administered, if he did not know the answer to a question or possibly did not understand what was being asked, he had a tendency to look up at the examiner until prompted to give a response. She also stated that the results of the testing can be considered valid indications of the Appellant's overall level of cognitive functioning. Dr. Pollak stated that while the Appellant's level of intellectual functioning was measured as falling in the borderline range, she noted that the WAIS-III was administered under optimal conditions, in which the Appellant was working one-on-one with another individual and minimal distractions were present. She opined that his abilities are likely compromised when such structure and support are removed. She concluded that in light of his autism, cognitive impairment and extremely limited adaptive skills, the Appellant appears to meet criteria for mental retardation. (A1)

15. The Franciscan Children's Hospital's Neurorehabilitation Program Outpatient Consultation dated September 10, 1992 states that the Appellant's diagnoses are cerebral dysfunction, manifested by attention deficit hyperactivity disorder and mental retardation with specific learning disability associated with problems of language production, auditory comprehension and verbal memory. The report states that it is possible that the Appellant has a pervasive developmental disorder, schizoid type. This report notes that previous testing done by Martha A. Collette, Ph.D. in March of 1992 may not be valid because the Appellant could not comply with the requirements of attending, initiating, and following through with the examination questions. It also noted that he may improve if an appropriate learning situation is created. This Consultation was signed by Dr. Norman H. Bass, M.D. (D9-10)

16. The Franciscan Children's Hospital Inpatient Discharge Summary dated October 23, 1992 gives the Appellant a diagnosis of cerebral dysfunction manifested by mental retardation. It notes that this is associated with intelligence quotient of 60 received on the Stanford-Binet. It also notes that the Appellant has global retardation of learning abilities at a 4 to 5 year old age equivalency. At this time

the Appellant was 8 years, 3 months of age. The report also gives the Appellant a diagnosis of pervasive developmental disorder with autistic qualities. The report goes on to say in the Recommendations for Treatment section that it is felt that the Appellant does not have a language based learning disability. The Discharge Summary is signed by Norman H. Bass, M.D., Medical Director of the Brain Injury Rehabilitation Program at the Franciscan Children's Hospital. (D7)

17. Veronica Wolfe, DMR's Regional Eligibility Manager testified on behalf of DMR. She explained her role in the eligibility process and confirmed that she had sent the letter informing the Appellant that he was ineligible for DMR services. She also stated that the decision was clinical and that the Appellant had appealed the decision. (D1)

18. Margaret Marino, Ph. D. testified as an expert witness for DMR. She stated that she in an independent practice. She stated that one-half of her practice is devoted to psychological testing of adolescents and adults. She stated that she is a licensed psychologist. She stated that she had performed hundreds of IQ tests and has reviewed approximately one hundred such tests. Dr. Marino explained the concepts of validity and reliability and stated that they are essential when looking at IQ test scores. She further explained the concept of the standard error of measurement and how it relates to a true score. She went on to explain that subtests measure different aspects of the Verbal and Performance parts of an IQ test. She stated that subtest scatter refers to inconsistency in subtest scores and can be found between subtests (inter-subtest scatter) and within subtests (intra-subtest scatter). She stated that some reasons for inter-subtest scatter could be attributed to brain damage, a learning disability or emotional problems. Dr. Marino stated that while it was possible to artificially suppress one's IQ score, it was not possible to inflate one's score. She explained that the use of the word fake in this context meant that an individual test score may be suppressed by his/her emotions or mood. (D2)

Dr. Marino testified that she met the Appellant when he was 19 years of age. She was informed that he was adopted from Korea at 21 months of age. She was also told that when he came home, he had broad developmental delays in every area and that his parents had been very vigilant about getting services for him. She stated that she did not read any reports prior to testing the Appellant. She stated that based on her meeting with the Appellant and her testing of him, it was her opinion that he does not meet the eligibility criteria for DMR adult services. She stated that on the test that she administered to the Appellant, the WAIS-III, he received a Verbal IQ score of 79 which is at the high end of the borderline range. She stated that for someone with mental retardation typically the scaled score on the Verbal subtests would be 5 or below. She testified that the Appellant's score of 11 on the Information subtest was above average. She stated that this was not a common score for someone who was mentally retarded. She noted that the subtest scatter (3-11) indicated that the Appellant had good rote recall but his comprehension is less than his rote recall. She stated that this could be due to a

learning disability or autism. She stated that the subtest scores of mentally retarded individuals are usually low and flat with little scatter. She testified that the Appellant showed strength in the areas of general knowledge and information and that these strengths are not typical for individuals with mental retardation. Dr. Marino stated that the Appellant received a Performance IQ score of 78 which is at the high end of the borderline range. Dr. Marino stated that the Appellant had a Picture Arrangement subtest score of 12 which is above average. She testified that on the Performance subtests the Appellant had a low score of 4 and a high score of 12 indicating subtest scatter. She stated that such scatter might be due to learning disabilities or emotional difficulties. She stated that this is not typical of someone with mental retardation. She stated that the Appellant shows some relative abilities in some areas and this is not typical of individuals with mental retardation. Dr. Marino stated that she had no doubts about the validity or reliability of her testing. (D3, D4)

On cross examination, Dr. Marino testified that of the hundreds of IQ tests she had given approximately 50-100 were performed to determine DMR eligibility. She also stated that the when applying the standard error of measurement to the Appellant's scores on the test that she administered, the range of his scores would be; Verbal 74-84, Performance 73-83 and Full Scale 72-82.

On redirect the Attorney for DMR asked Dr. Marino to compare the Appellant's scores on the Wide Range Achievement Test (WRAT) that she administered with his scores on the WAIS-III. Dr. Marino testified that the scores were relatively the same.

Dr. Marino testified relative to the Appellant's previous test results. She stated that in 1997 when he was 13 years, 5 months of age his Verbal IQ score was 74, his Performance IQ score was 76 and his Full Scale IQ score was 69. She pointed out that the block design subtest, the Appellant received a score of 9 which is average. (D5)

Dr. Marino testified relative to neuropsychological evaluation that was done in 1996 when the Appellant was 12 years of age. She stated that on this test he had a Verbal IQ score of 75, a Performance IQ score of 58 and a Full Scale IQ score of 64, but noted that because he only completed 3 of the Performance subtests, the Full Scale IQ score would not be considered to be valid. She stated that the tester's neurological impression was that the Appellant has PDD. (D6)

Dr. Marino testified relative to a report from the Franciscan Children's Hospital in October of 1992 when the Appellant was 8 years, 3 months of age. She stated that at that time the Appellant's Full Scale IQ score on the Stanford-Binet was 60. She pointed out that although the tester placed the Appellant in the mildly retarded range, because he had difficulty attending to the tasks presented, the diagnosis may not be accurate. She noted that the recommendation of a program for children PDD seems to suggest that the tester believed that the Appellant's

diagnosis was that of PDD. Dr. Marino explained that although a statement in the report states that in the tester's opinion the Appellant does not have a language based learning disability but is globally retarded that this opinion is based on the IQ score of 60 which she believes is not an accurate measure of the Appellant's intelligence. Dr. Marino went on to say that another report from the Franciscan Children's Hospital makes this clear. (D7)

Dr. Marino testified relative to testing done at the Franciscan Children's Hospital in October of 1992 when the Appellant was 8 years, 3 months of age. She stated that in reviewing this report, it was her opinion that the Appellant's IQ score was low due to behavioral difficulties. She stated that 2 of the 4 Standard Achievement Scores (SAS) were in the mentally retarded range while 2 were in the borderline range. She went on to say that she was not sure how the tester came to the conclusion that the test results appeared to provide a valid estimate of the Appellant's abilities. Dr. Marino testified that the report's Clinical Formulation gave the Appellant a diagnosis of PDD and stated that this is not the same as a diagnosis of mental retardation. She stated that she understood how the tester reached the second diagnosis contained in the Clinical Formulation. That diagnosis was mental retardation of mild severity. Dr. stated that this diagnosis was based on the IQ score of 60 which she felt was not accurate due to the Appellant's behavioral difficulties when taking the IQ test. She stated that the Appellant's distractibility when taking the test provides a reason for why the scores are so low. She also stated that the tester's recommendation that the Appellant attend a program geared to children with PDD would not be the recommendation that would be made for a child with mental retardation. (D8)

Dr. Marino testified relative to a report of a Neurorehabilitation Program Outpatient Consultation. The consultation was conducted by Norman H. Bass, M.D. at the Franciscan Children's Hospital in September of 1992 when the Appellant was 8 years, 2 months of age. She noted that the Dr. Bass commented that a previous test in which the Appellant received a Verbal IQ score of 60, a Performance IQ score of 51 and a Full Scale IQ score of 54 was not considered totally valid since the Appellant could not comply with the requirements of attending, initiating and following through with the examination questions. She noted that the Disability Assessment contained in the report states that the Appellant has mental retardation with severe specific learning disability associated with expressive and receptive aphasia and intelligence quotient in the moderately retarded range. She went on to say that it was not usual to have mental retardation and learning disabilities in the same sentence. She stated that they are separate concerns and stated that she did not know what was meant by the statement. She also stated that the notion that the Appellant would benefit from rehabilitation indicates to her that the reporter did not believe that the Appellant was mentally retarded. (D9)

Dr. Marino testified relative to the testing that was done by Martha A. Collette, Ph.D. when the Appellant was 6 years, 8 months of age. Dr. Marino stated that

according to the report the Appellant scored a 12 on the Similarity subtest which was an above average score. Dr. Marino agreed that tester's estimate that the Appellant's potential cognitive ability is solidly average or above is quite different from a diagnosis of mental retardation. She stated that the Appellant's abstract reasoning indicates that he is not a person with mental retardation. Dr. Marino agreed that the Appellant's Comprehension subtest score of 4 would be consistent with a diagnosis of mental retardation. Dr. Marino stated that the Appellant's test behavior would affect his scores in a negative way making his higher scores lower than they might otherwise be. Dr. Marino stated that she did not find this report very helpful, but she appreciated the tester's honesty. (D10)

Dr. Marino testified relative to the testing that was done by Lois Carra, Ph. D. in 1988 when the Appellant was 4 years, 4 months of age. She stated that the tester identified that the Appellant had made significant progress since coming home. Dr. Marino stated that he showed substantial gains and from the prospective of MR you never expect great progress. She stated that although you do expect progress, it is always slow. Dr. Marino stated that the report doesn't provide scores but that testing at age 4 is not usually very helpful. She stated that consistent with the report, her expectation would be that some of the Appellant's developmental gaps would have closed since his adoption due to the provision of nurturing, love, food, shelter, comfort and learning. Dr. Marino agreed that the tester stated that at that time it was too early to predict whether the Appellant would completely close the gap between his current performance and his chronological age. She also agreed that the tester did not make a diagnosis. (D11)

Dr. Marino testified relative to a neuropsychological evaluation of the Appellant performed by Lauren E. Pollak, Ph.D. in 2005 when he was 21 years of age. Dr. Marino stated that the scores on this test were essentially the same as the test scores the Appellant received when she tested him. Dr. Marino agreed that DSM-IV states that it is possible to diagnose mental retardation in individuals with an IQ of 70-75 who exhibit significant deficits in adaptive behavior and that based on this definition Dr. Pollak could find the Appellant to be mentally retarded. Dr. Marino stated that it is not common for people with mental retardation to show strength in areas such as fund of general information but that often people with autism display such strength. Dr. Marino disagreed with Dr. Pollak's conclusion that the Appellant is mentally retarded. She noted that Dr. Pollak did not review previous test scores. Dr. Marino agreed that Dr. Pollak's opinion was that working with the Appellant on a one-to-one basis worked to his advantage. (A1)

FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, I find 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) 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 and the third criteria and I specifically find that he meets those criteria.

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 "mentally retarded" as that term is used in statute and regulation for the determination of DMR supports.

I find that the Appellant has significantly sub average intelligence. The evidence showed that the majority of his valid test scores on intelligence tests given prior to age 18 were below 75. The evidence showed that one of his valid test scores after age 18 was a 75 and one was a 77. I therefore find that the majority of the Appellant's assessments resulted in IQ scores of 70 to 75 or below. The report of testing done when the Appellant was 13 years, 5 months of age by the Chief of Psychology at Massachusetts General Hospital states the Appellant received a Full Scale IQ score of 69. DMR's expert did not dispute the validity of this score. The report states that the Appellant is intellectually limited as demonstrated on his previous neuropsychological testing and supported by the current testing. The report of testing done when the Appellant was 8 years, 3 months of

age at the Franciscan Children's Hospital states that the Appellant received a standard composite IQ score of 60. Despite the opinion of DMR's expert witness that the Appellant's behavior may have had a negative effect on his test scores, the report states that the results of the test appeared to provide a valid estimate of the Appellant's abilities as he attended to the subtests and followed through on them as directed. The report of the testing done at the Massachusetts General Hospital when the Appellant was 21 years of age states that although the Appellant's score (75) fell within the borderline range, the test was administered under optimal conditions and without support and structure his abilities are likely to be compromised. DMR's expert agreed that working on a one-to-one basis with the tester worked to the Appellant's advantage. The report of the test administered to the Appellant by DMR's expert witness was the only one which showed a score above 70-75.

Both parties agree that the Appellant has sufficient adaptive deficits required to make a finding of that he is mentally retarded so it is not necessary for me to enumerate those deficits. Likewise both parties agree that the Appellant is in need of specialized supports in at least three of the requisite 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: November 9, 2005

Marcia A. Hudgins
Hearing Officer