



The Commonwealth of Massachusetts  
Executive Office of Health & Human Services  
Department of Mental Retardation  
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Boston, MA 02118

Mitt Romney  
Governor

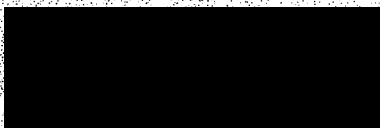
Kerry Healey  
Lieutenant Governor

Ronald Preston  
Secretary

Gerald J. Morrissey, Jr.  
Commissioner

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March 23, 2004



Re: Appeal of [REDACTED]  
Final Decision

Dear Ms. [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

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

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 March 5, 2004 at the Department's Worcester Area Office in Worcester, Massachusetts. Those present for the proceedings were:

Richard P. Costigan, Psy.D.  
John C. Geenty, Jr.

DMR Psychologist  
Attorney for DMR

The evidence consists of documents submitted by DMR numbered D1-5 and approximately one hour of oral testimony. The Appellant did not appear nor did anyone appear on his behalf.

**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. Appellant is a 20-year old man who currently resides at [REDACTED] a residential school located in [REDACTED] Massachusetts. (testimony of Richard Costigan, D2)

2. Two Psychological Evaluations were entered into evidence by DMR.

Norman E. Weitzberg, Ph.D. tested the Appellant when he was nineteen (19) years of age. Dr. Weitzberg concluded that the Appellant functions in the borderline range of intellectual functioning. He stated that he would be inclined to diagnose the Appellant as having a Pervasive Developmental Disorder, NOS. Dr. Weitzberg did not make a diagnosis of mental retardation. (D2)

Steffen Fuller, Ph.D. tested that Appellant when he was thirteen (13) years of age. Dr. Fuller concluded that the Appellant's overall level of intellectual functioning can be seen at the borderline to low average level. He did not make a diagnosis of mental retardation. (D3)

3. One evaluation of Adaptive Behavior was entered into evidence by DMR. This evaluation was completed when the Appellant was nineteen (19) years of age. (D4)

4. Richard P. Costigan, a licensed psychologist employed by DMR testified as an expert witness for the Department. He explained that he had been an Eligibility Psychologist for approximately the past year and a half. In that capacity, he makes all decisions regarding eligibility for DMR's Central West Region and is familiar with the Appellant's case. He testified that he relied on several test reports when making his determination relative to the Appellant's eligibility for DMR services. (D1)

The first document that he reviewed was the report of the Psychological Evaluation performed by Norman E. Weitzberg, Ph.D. Dr. Costigan explained that Dr. Weitzberg administered the Wechsler Adult Intelligence Scale-Third Edition (WAIS-III). The Appellant's scores on that test were a Verbal IQ of 87, a Performance IQ of 73 and a Full Scale IQ of 78. Dr. Costigan went on to say that in order to be eligible for services from DMR an individual's score on an intellectual assessment must be two (2) standard deviations below the mean which comes out to a Full Scale IQ score of approximately 70. The Appellant's Verbal Score of 87 was in the 19th percentile and his Verbal Comprehension Index of 101 was solidly in the average range at the 53rd percentile. The Performance IQ score of 73 puts the Appellant in the 4th percentile. He stated that this score is indicative of a non-verbal learning disability. (D2)

The second document that he reviewed was a Psychological Testing Report written by Steffen Fuller, Ph.D. Dr. Fuller's conducted the Weschler Intelligence Scale for Children-Third Edition (WISC-III) at the Westwood Pembroke Health System - Boston Center. Dr. Costigan stated that on this test the Appellant obtained a Verbal IQ score of 87, a Performance IQ score of 73 and a Full Scale IQ score of 78. These are the exact same scores that the Appellant received when he was given the WAIS-III at age 19. He stated that the test results showed a similar pattern on the Verbal IQ test with a Vocabulary subtest score of ten (10). This subtest is most highly correlated with Verbal and Non Verbal IQ. The Appellant lowest nonverbal subtest score was on the coding subtest. The Appellant scored a one (1) on that subtest which Dr. Costigan explained is the subtest that is the least correlated non-verbal subtest with Non Verbal IQ and it is often associated with attentional difficulties. (D3)

He noted that the two psychological evaluations that he reviewed show that the Appellant's Verbal IQ is in the low average range, the Performance IQ is in the borderline range and the Full Scale IQ is in the upper end of the borderline range. He stated that none of the Appellant's scores are two standard deviations below the mean, which is necessary for a diagnosis of mental retardation and to receive services from DMR.

Dr. Costigan also reviewed the Adaptive Behavior Assessment System (ABAS) completed by Jim Isidorio, a therapist/clinician employed by the Appellant's residential school. This assessment measures adaptive functioning across ten (10) areas. Dr. Costigan explained that in order to be eligible for DMR services an individual must have

significant adaptive functioning deficits in three (3) of seven (7) areas that DMR considers. The Appellant's composite score on this measurement was a 98, which places him solidly in the average range. Of the seven (7) subtest considered by DMR, six (6) are solidly in the average range. Work was not a subtest that was considered because the Appellant has had no exposure to work. Dr. Costigan summarized by stating that the Appellant's adaptive functioning is solidly in the average range with no significant deficits. (D4)

Dr. Costigan stated that he had read the Appellant's chart but that he relied on the three (3) documents reviewed in his testimony in reaching his decision relative to eligibility. Dr. Costigan stated that he had completed an Eligibility Report for DMR and that his recommendation was that the Appellant does not meet the eligibility for DMR adult services. He stated that the Appellant's cognitive and adaptive levels of functioning are significantly outside the range of individuals served by the Department of Mental Retardation. (D5)

### 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. However, I find that he is not mentally retarded as that term is defined in 115 CMR 2.01.

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) 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 include 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. The two reports that were entered into evidence indicate that the Appellant's IQ score is 78. An IQ score of 78 does not come within the AAMR definition of significantly sub average intellectual functioning. As Dr. Costigan explained, this score is in the upper end of the borderline range. DMR also presented evidence relative to the Appellant's adaptive functioning. Because the Appellant failed to show that he has significantly sub average intellectual functioning, it was not necessary for me to consider his adaptive functioning in order to reach my decision.

#### 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: March 18, 2004

  
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Marcia A. Hudgins  
Hearing Officer