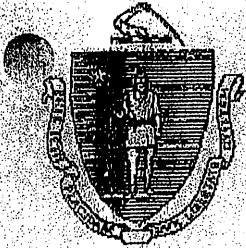


117. Deamon - Please review + keep on file



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

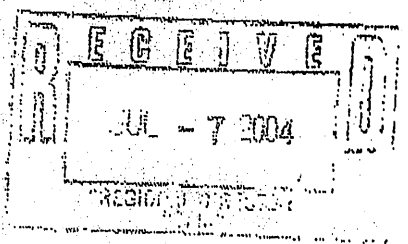
*Tracy*  
*Apprais 7/20/04*  
*Gay Richard*

Mitt Romney  
Governor  
Kerry Healey  
Lieutenant Governor

Ronald Preston  
Secretary  
Gerald J. Morrissey, Jr.  
Commissioner  
Area Code (617) 727-5608  
TTY: (617) 624-7590

June 17, 2004

By First Class Mail



Re: Eligibility Appeal on Behalf of [Redacted] - Final Decision

Dear Mr. [Redacted]

This letter will serve as notice regarding the final determination concerning the eligibility appeal hearing, conducted on March 8, 2004, relative to your sister, [Redacted]. The decision report completed by Hearing Officer Marcia A. Hudgins is enclosed for your review.

The recommended decision of Hearing Officer Hudgins includes findings of fact, proposed conclusions of law and a recommended decision. Pursuant to 115 CMR 6.33(i) (Appal Process), the findings of fact are binding upon the Department of Mental Retardation (DMR); however it is within my discretion to "modify the conclusion of law and decision where the conclusion or decision . . . are based upon an abuse of discretion, or otherwise not in accordance with the law."

The Hearing Officer's findings of fact are accepted; however, the legal conclusions are hereby modified and the Appellant's eligibility appeal is therefore **denied**. The Hearing Officer's recommended decision is premised upon an erroneous conclusion that goes "against the logic and facts presented at hearing." See Dunbar v. Dunbar, 251 N.E.2d 468, 483 (1969). Further, the Hearing Officer failed to reach her decision based upon the evidence presented at hearing, see 801 CMR 1.02(10)(f), and failed to make her decision based "upon consideration of the entire record." Cohen v. Board of Registration in Pharmacy, 350 Mass. 246, 253, 214 N.E.2d 63, 68 (1966).

Relevant Findings of Fact

The primary issue presented by this appeal is whether the Appellant's intellectual functioning meets the AAMR requirement for a diagnosis of mental retardation. According to the Hearing Officer's Findings, the Appellant underwent a series of testing for intellectual

functioning: in October of 1997 she was examined by Melvin Lew, Ph.D., using the WAIS-R and had a full scale IQ score of 80 (Hearing Officer's Decision ["Decision"] at ¶ 7); in December of 1997 she was evaluated by Alex Ursprung, Ph. D., using the WAIS-R and found to have a full-scale IQ score of 83 (Decision, ¶ 8). In February of 2004, the Appellant was examined by Robert S. Holloway using the WAIS-III and found to have a full-scale IQ score of 75 (Decision, ¶9).

The only expert witness at the fair hearing testified for the Department. Richard P. Costigan, Ph.D., testified that none of the three (3) evaluations he had reviewed (by Lew, Ursprung or Holloway) showed that the Appellant's IQ scores were two (2) standard deviations below the mean (Decision, ¶ 16). Costigan testified that he reviewed testing done by Dr. Ursprung in 1997 and by Dr. Holloway in 2004, and that in his view the Appellant did not fall within the American Association of Mental Retardation's definition of mental retardation. (Decision ¶16). In reaching this conclusion, Dr. Costigan considered, among other things, the standard error of measurement, the various subtest scores and the "scatter" demonstrated in the most recent test scores. (Decision ¶ 16).

The Appellant's sister presented an article, *The Flynn Effect and U.S. Policies* (Kanaya, Scullin, Ceci, *American Psychologist*, October 2003). The publication discusses several hypotheses regarding trends in psychological testing scores.<sup>1</sup> The Appellant's sister then asked Dr. Costigan a series of questions regarding the impact of the Flynn effect on IQ test scores.

According to the Hearing Officer, when questioned about the "Flynn effect" generally, Dr. Costigan testified that "if the WAIS-R were administered in 1997, on average an individual's score would be higher than if given when the test first came out." (Decision, ¶ 17). Dr. Costigan further testified that "tests are re-normed because items become not (sic) familiar to the population and reliability is lost." (Decision ¶17). Dr. Costigan stated that a good examiner would take the Flynn effect into consideration and that would make the test scores valid." (Decision ¶ 17). When asked "if one took the Flynn effect (plus 5-6 points) and the standard error of measurement (plus or minus 5 points) and applied them to Appellant's Full Scale IQ scores of 80 and 83 would it be possible to find those scores coming within the AAMR definition of mental retardation. Dr. Costigan stated that it was 'highly hypothetical' and that he 'did not believe it was possible.'" (Decision ¶17).

### Legal Conclusions

The Hearing Officer's findings of fact indicate that the Appellant's full-scale IQ scores ranged over time from 80 and 83 in 1997 to 75 in 2004, each borderline scores not meeting the AAMR definition of mental retardation which requires an IQ score of 70 or less. The record further indicates that in reaching his opinion regarding the level of Appellant's intellectual function, Dr. Costigan relied upon considered three IQ test administered, including full-scale scores, subtest scores, subtest "scatter," and the standard measure of error. All observed scores

<sup>1</sup> At the hearing, there was no expert testimony or evidence presented by the Appellant supporting the reliability or acceptance of the published article in the field of clinical psychology, or its application to the Applicant's test scores.

were above 70, and thus the conclusion that the appellant was not a person with mental retardation was amply supported.

Appellant contends that the "Flynn effect," coupled with the standard measurement of error, effectively reduces the Appellant's IQ scores to 70 or less. The Hearing Officer credited this argument, and after finding the Appellant's 2004 IQ score of 75 to be "the most reliable," the Hearing Officer applied the standard measure of error to find that the score of 75 fell "within the AAMR definition of mental retardation," 70 or less. Decision at 6. The Hearing Officer further supported her finding of eligibility by concluding that Appellant's 1997 WAIS-R score of 83 should be reduced by 5-6 points to adjust for the Flynn effect, and, when combined with the standard measure of error, the score "translates into a score of 74 or 75." *Id.* Here, the Hearing Officer committed error and abused her discretion.

Even assuming that expert evidence was presented to support the application of the Flynn effect to reduce an individual's score, which it was not, Dr. Costigan testified that a good examiner would consider the Flynn effect in determining results. There is no evidence that the 1997 examiners who used the WAIS-R, Drs. Lew and Dr. Ursprung, did *not* consider the Flynn effect in reaching their results. Further, Dr. Costigan testified that it was "highly hypothetical" and not "possible" to apply the Flynn effect *today*, together with the assumption for standard deviation, to adjust IQ scores after the test administration.

Even assuming, *arguendo*, that the examiners in each of the two 1997 WAIS-R test administrations did not consider the Flynn effect in determining the full-scale scores, Dr. Costigan relied upon another test administration, the WAIS-III in 2004 with a resulting full-scale score of 75, also above the AAMR definition for mental retardation. The Hearing Officer's adjustment downward of the score for the standard measure of error, unsupported by expert testimony, also constitutes error.

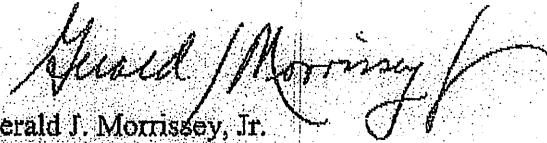
Although administrative agencies "need not observe the rules of evidence observed by the courts . . . Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." *College-Town, Division of Interco, Inc. v. MCAD*, 400 Mass. 156, 169 (1987). In this case, expert testimony or opinion is required to support the conclusion that the Appellant is a person with mental retardation. Applying the theory that *on average* IQ's trend upward after the release of an exam to re-determine an individual's IQ score, without any expert testimony to support such application, is not the kind of evidence that may be relied upon to determine eligibility under the regulations. In light of the expert testimony that the application of the Flynn effect to adjust the Appellant's IQ results was "highly hypothetical" or not "possible," adjustment of the scores was error.

In sum, in light of the expert testimony presented which indicated it was not "possible" and "highly hypothetical" to combine the standard error of measurement with the "Flynn effect" after the fact to arrive at an IQ score that would place the Appellant within the range for eligibility under the AAMR definition; and lacking any expert testimony to support that the appellant was an individual with IQ test scores within the accepted range, it was an abuse of discretion and contrary to law to conclude that the Appellant was a person with mental

retardation. The proposed conclusions of law are so modified and the Appellant's eligibility appeal is hereby denied.

You, or any person aggrieved by this decision may appeal to the Superior Court in accordance with G.L. c. 3A. The regulations governing the appeal process are 115 CMR 6.30 - 6.34 and 801 CMR 1.01 - 1.04.

Very truly yours,



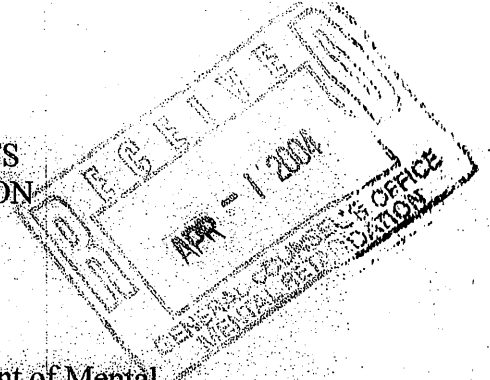
Gerald J. Morrissey, Jr.  
Commissioner

cc: Marcia Hudgins, Hearing Officer  
Terry O'Hare, Regional Director  
Marianne Meacham, General Counsel  
Bill Zimmer, Regional Eligibility Manager  
John Geenty, Assistant General Counsel  
Richard Costigan, Ph.D.  
Victor Hernandez, Field Operations Senior Project Manager  
File



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 8, 2004 at the Department's Worcester Area Office in Worcester, Massachusetts. Those present for the proceedings were:

[REDACTED]  
Richard P. Costigan, Psy.D.  
John C. Geenty, Jr.

Appellant  
Appellant's sibling  
DMR Psychologist  
Attorney for DMR

The evidence consists of documents submitted by the Appellant numbered A1-5, documents submitted by DMR numbered D1-5 and approximately three hours of oral testimony. I also considered the American Association on Mental Retardation (AAMR) Fact Sheet which discusses the 2002 AAMR definition of mental retardation. This document was previously provided to me by DMR for use in my decisions.

Additionally I reviewed an article from the American Psychologist dated October 2003 entitled "The Flynn Effect and U.S. Policies" provided by the Appellant. The Department's expert witness stated that he was familiar with the Flynn Effect and with this article.

#### 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. The Appellant is a 56-year old woman who resides with her brother in Paxton, Massachusetts (A5)
2. One Psychological Evaluation was entered into evidence by DMR. (D4)
3. One Wechsler Adult Intelligence Scale-Revised (WAIS-R) Record Form was entered into evidence by DMR. (D-3)

4. One Psychological Evaluation was entered into evidence by the Appellant. (A5)

5. One evaluation of Adaptive Behavior was entered into evidence by DMR. (D5)

6. The Appellant's Student Record, two letters from treating physicians and a Discharge Summary from Pembroke Hospital were entered into evidence by the Appellant. (A1-4)

7. Melvin Lew, PhD, administered the WAIS-R to the Appellant on October 31, 1997. Dr. Lew indicated that the Appellant's IQ scores on that administration of the test were: a Verbal IQ score of 81, a Performance IQ score of 85, and a Full Scale IQ Score of 80. Because there was no accompanying Psychological Report interpreting this document, I did not give it as much weight as I gave the other two documents containing test scores. I did however consider it in reaching my decision as it was used by Dr. Costigan in confirming his decision of the Appellant's ineligibility for DMR services and discussed by Dr. Costigan during his testimony and during questioning by Margaret Melican. (D3)

8. Alex W. Ursprung, Ph.D., a licensed psychologist administered the WAIS-R to the Appellant in December of 1997 when she was forty-nine (49) years of age. Dr. Ursprung states in his report that on this test the Appellant obtained the following IQ scores expressed in terms of a 95% confidence interval: a Verbal IQ score of 84 +/-5, a Performance IQ score of 82 +/-7, and a Full Scale IQ score of 83 +/-5. According to Dr. Ursprung, the Appellant's IQ scores place her in the low average intellectual functioning according Wechsler's classification and the borderline range of intellectual functioning according to the DSM-IV classification. Dr. Ursprung went on to say that the Appellant has significant cognitive damage and the hallmarks of what used to be called an organic personality disorder. She has extraordinary deficits in social judgment and adaptive behavior. He believed that she requires the support of other individuals in her day-to-day existence. He stated that although technically she does not test-out as mentally retarded, she functions like a mentally retarded person. She has a highly rigid personality structure, characteristic of individuals with severe organic damage. Dr. Ursprung stated in his report that a structured vocational program would be high beneficial to the Appellant. He opined that such a program might also assist her with independent living skills. (D4)

9. Robert S. Holloway, Ed. D., a licensed psychologist administered the WAIS-III to the Appellant in February of 2004 when she was fifty-six (56) years of age. Dr. Holloway states in his report that on this test the Appellant obtained the following IQ Scores: a Verbal IQ score of 78, a Performance IQ score of 75, and a Full Scale IQ score of 75. He states that this places her in the borderline range of intellectual functioning. He also states that borderline intellectual functioning is generally associated with IQ values, which fall within the 71-84 range. Those IQ values which range between 50 and 70 constitute the mild mentally retarded range of functioning. He notes the Appellant's deficiency on the Comprehension subtest where her scaled score of three (3) fell at the first (1st) percentile. He states that within a verbal format, when required to demonstrate her ability to use practical knowledge and judgment in social situations her performance

was markedly deficient. Dr. Holloway concludes that the result of this evaluation failed to support a diagnosis of mild mental retardation. All of the Appellant's scores fell within the borderline range of intellectual functioning. He states that she is not capable of independent living and will require a supportive living system for the rest of her life. (A5)

10. The Appellant's adaptive functioning was evaluated in September 2003 using the Adaptive Behavior Assessment System (ABAS) when she was fifty-five (55) years of age. The Appellant and her sister answered the questions relative to the evaluation. The results of this evaluation concluded that the Appellant has substantial functional limitations in the areas of community use, health and safety, self-direction, social skills and work. (D5)

11. The Appellant's Student Record indicates that at some point she scored a 56 on the Binet. It also revealed that she took Crafts for three (3) years and Occupational Training during her last year in high school. She took one (1) year of Personal Typing and two (2) years of Typing I. I did not consider the IQ score stated on this document because there was no indication of what form of the test was given, when it was given or an explanation of the results. (A-1)

12. Letters from two physicians stated that the appellant was mentally retarded. Dr. Elizabeth Benjevin, M.D. of the Fallon Clinic stated that she is the Appellant's personal physician. She based her opinion on physical examination. M. Rachid Och, M.D. Prescott Health Care, LLP stated that he has been familiar with the Appellant since December of 2003 and has evaluated and treated her. He based his opinion of mental retardation on his observations and on his review of old records. I did not consider either of these opinions in reaching my decision because they were not supported by any test scores or explanations of those scores. (A2-3)

13. The Appellant's Discharge Summary from the Pembroke Hospital dated December 14, 2003 authored by Eliot Gelwan, M.D. indicates a diagnosis of borderline/mild MR. The report states the Appellant has intellectual deficits and that her IQ is estimated to be around 70. I did not consider this opinion in reaching my decision because it was not supported by any test scores or explanations of those scores. (A4)

14. [REDACTED] the Appellant's younger sister testified on behalf of the Appellant. Ms. [REDACTED] testified that the Appellant had applied for DMR eligibility in 1997 and that she had been denied. According to Ms. [REDACTED], although an appeal was filed at that time, no informal hearing took place and the process did not go forward. A second application was made in 2003 and again the Appellant was found not eligible. Ms. [REDACTED] stated that she believed that the definition of mental retardation had changed from the time of the first application. She believed that in 1997, to be considered mentally retarded an applicant's IQ score had to be 75 or below and that the current definition requires an IQ of 70 or below. She went on to say that the only record of the Appellant's intellectual functioning prior to age eighteen (18) was the [REDACTED] High School Record which she introduced into evidence. She also introduced additional



documents to support a finding of mental retardation (A1-5)

Ms. [REDACTED] stated that the Appellant was born normally but contracted encephalitis at eighteen (18) months of age. This resulted in her having epilepsy and mild mental retardation. She had an extremely modified education program including special education classes. After high school she worked at the Deveraux School where she received vocational training. She worked part-time and then full-time at the Rutland Hospital until it closed. After the hospital closed, the Appellant worked at Seven Hills in the kitchen and folding clothes. She worked in the same capacity at the Anna Maria College until she had a seizure that forced her to retire.

15. Both the Appellant her sister testified relative to the Appellant's adaptive skill deficits. The Appellant has significant difficulty managing money, exercising good judgment, engaging in gainful employment, and taking care of her own health needs. These difficulties are highlighted in the ABAS Evaluation and are not in dispute.

16. Richard P. Costigan, Psy.D., 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 the Psychological Test Report authored by Alex W. Ursprung when making his determination relative to the Appellant's eligibility for DMR services. His Eligibility Report dated October 16, 2003 found that the Appellant did not meet the criteria for DMR Adult Services. (D1-2, D4)

He also stated that he reviewed the WAIS-R Protocol (Record Form) dated October 31, 1997, which was produced by the Appellant at the informal hearing. Finally he stated that he reviewed the WAIS-III results as set out in the Psychological Evaluation completed by Robert S. Holloway dated February 21, 2004 which was provided to him by the Appellant at the hearing. After his review of these additional documents, Dr. Costigan stated that his opinion regarding the Appellant's eligibility for DMR services had not changed. He stated that to be eligible for DMR services an individual must have significant cognitive deficits which means that they must have an IQ score which is two (2) standard deviations below the mean. That is an IQ score of 70 or below. (D3, A5)

Dr. Costigan also stated that in order to be eligible for DMR services an individual has to have adaptive functioning deficits in three (3) out of seven (7) areas. The deficits must be two (2) standard deviations below the mean. The areas are communication, community use, functional academics, home living, health and safety, self care and work.

Dr. Costigan stated that the DMR definition of mental retardation has not changed from 1997 to the present. The 2002 American Association of Mental Retardation's definition does consider the plus or minus five (5) point standard error of measurement in its definition although it does not state the range of 70-75.



Dr. Costigan stated that none of the three (3) evaluations he reviewed showed that the Appellant's IQ scores were two (2) standard deviations below the mean. He went on to say that most individuals who are mentally retarded have flat subtest scores. Although the Appellant's 1997 WAIS-R Profile shows flat scores of 7, 6, and 5 on the subtests, he pointed out that the most recent IQ test which was administered in 2004 shows scatter. He noted that on this administration the Appellant scored in the first (1st) percentile on the Comprehension subtest. He explained that this test measures whether one appreciates the difference between right and wrong in a social setting and is influenced by what one is doing. It measures how one is engaging in the world. (A5, D3-4)

Dr. Costigan stated that the Appellant has significant limitations in three (3) adaptive skill areas according to the 2003 ABAS evaluation. Those areas are community use, health and safety and work. He testified that he did take the Appellant's adaptive limitations into consideration when making his eligibility determination because his focus was on her cognitive functioning. (D5)

Dr. Costigan stated that in his opinion the Appellant does not meet eligibility criteria for DMR services.

17. [REDACTED] questioned Dr. Costigan regarding the administration of the WAIS-III. Dr. Costigan stated that the score of 75 could be a 70 when taking into consideration the standard error of measurement of plus or minus five (5) points. He explained that the WAIS-III is a renormed version of the WAIS-R. He explained that tests are renormed because items become not familiar to the population and reliability is lost. He further explained that as soon as an IQ test is put out it captures the bell curve but the Flynn Effect, which is statistically supported holds that people's scores are higher about three (3) years after the test is put out. He stated that a good examiner would take the Flynn Effect into consideration and that would make the test scores valid. When asked if the examiner can renorm the test, Dr. Costigan answered no.

Ms. [REDACTED] then asked Dr. Costigan questions relative to the WAIS-R which he said came out in 1981. Dr. Costigan stated that if the WAIS-R were administered in 1997, on average an individual's score would be higher than if given when the test first came out. He stated that over a period of ten (10) years a three-point increase would be reasonable. He stated that the WAIS-III would provide the most accurate score. He explained that the Flynn Effect is different from the standard error of measurement. The standard error of measurement is plus or minus 5 points. He stated that after a sixteen (16) year period: 1981 when the WAIS-R first came out and 1997 when the Appellant took the WAIS-R, the Flynn Effect could count for a difference in test scores of plus five (5) to six (6) points.

Ms. [REDACTED] asked Dr. Costigan if she was found to have attained a score of 70 on the WAIS-III would she meet eligibility criteria. He stated that she would be eligible if all three IQ test scores were 70 or below.

Ms. [REDACTED] asked Dr. Costigan if one took the Flynn Effect (plus 5-6 points) and the standard error of measurement (plus or minus 5 points) and applied them to the Appellant's Full Scale IQ scores of 80 and 83 would it be possible to find those scores coming within the AAMR definition of mental retardation. Dr. Costigan stated that it was highly hypothetical and that he did not believe that it was possible.

Ms. [REDACTED] asked Dr. Costigan if he felt the Appellant had impaired intelligence. He stated that she is below average, borderline and faces a number of challenges. She falls within the sixth (6th) to seventh (7th) percentile of intellectual functioning.

## FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence and despite the fact that she offered no expert testimony, 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 2.01, 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. There is no dispute that the Appellant meets the first criteria and I specifically find that she meets that criterion. Likewise there is no dispute that the Appellant is in need of specialized supports in three of seven adaptive skill areas: community use, health and safety and work. Both documentary evidence and testimony support this finding.

At issue is the whether the Appellant's IQ scores support a finding that she is a person with mental retardation as defined in DMR regulations.

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.

In reviewing all of the evidence presented, I find that the most reliable IQ score to consider is the one the Appellant obtained on the WAIS-III administered in 2004. I therefore gave the most weight to that test result. Taking into account the standard error of measurement of plus or minus five (5) points, the Appellant's Full Scale IQ score of 75 falls within the AAMR definition of mental retardation. I find this to be the case despite Dr. Holloway's statement in his report that the results of his evaluation failed to support a diagnosis of mental retardation.

I also considered the score obtained by the Appellant on the WAIS-R given by Dr. Ursprung in 1997. After hearing Dr. Costigan's explanation of how the standard error of measurement applies to IQ scores and how the Flynn Effect impacts IQ scores over time, I was not persuaded by his further testimony that these two precepts could not be applied to recalculate the Appellant's IQ score. I find that applying the Flynn Effect to the Appellant's Full Scale IQ score of 83 on this test translates into a score of 77 or 78. Taking into account the standard error of measurement, I find that the Appellant's Full Scale IQ score on this test does not fall within the AAMR's definition of mental retardation.

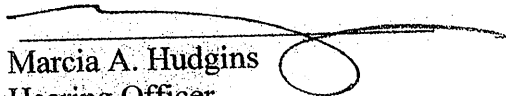
Finally I considered the score obtained by the Appellant on the WAIS-R Record Form (Protocol). This test like the one administered by Dr. Ursprung was given to the Appellant sixteen (16) years after it first came out. I find that applying the Flynn Effect to the Appellant's Full Scale IQ score of 80 on this test translates into a score of 74 or 75. Taking into account the standard error of measurement, I find that the Appellant's Full Scale IQ score on this test falls within the AAMR definition of mental retardation.

The Appellant contracted encephalitis at age eighteen (18) months. This resulted in epilepsy and cognitive deficits. She had a modified educational program including special education classes. Although there were no reliable IQ test scores presented prior to age eighteen, I find that the weight of the evidence leads to the conclusion that the Appellant manifested the same sub average intellectual functioning as is evidenced by two (2) of the three (3) IQ test scores in evidence and related limitations in her adaptive skill before age eighteen (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: March 25, 2004

  
Marcia A. Hudgins  
Hearing Officer