

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

Ronald Preston  
Secretary  
Gerald J. Morrissey, Jr.  
Commissioner

Area Code (617) 727-5608  
TTY: (617) 624-7590

June 28, 2004

[REDACTED]  
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 Deanne Osborne'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 allowed.

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  
Amanda Chalmers, Regional Director  
Marianne Meacham, General Counsel  
Veronica Wolfe, Regional Eligibility Manager  
David Fleischman, Assistant General Counsel  
Elina Wayrynen, Psychologist  
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 11, 2004 at the Hogan Regional Center in Hathorne, Massachusetts.

Those present for the proceedings were:

[REDACTED]  
Veronica Wolfe, M.S.  
Elina Wavrynen  
David Fleischman

Appellant  
Appellant's sister and guardian  
Appellant's brother-in-law  
Regional Eligibility Manager  
DMR Psychologist  
Attorney for DMR

The evidence consists of documents submitted by the Appellant numbered A1-4, documents submitted by DMR numbered D1-7 and approximately 1 and 1/2 hours of oral testimony.

I also considered the American Association on Mental Retardation (AAMR) Fact Sheet, which discusses, among other things, the AAMR definition of mental retardation and the causes of mental retardation. This document was previously provided to me by DMR for use in my decisions.

**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 54-year-old woman who lives in [REDACTED] MA. (A3-4, testimony of [REDACTED])
3. Five (5) reports of psychological testing of the Appellant after the age of 18 were entered into evidence. (D4-7, A4)

4. A number of the Appellant's IQ test scores were included in documents from the [REDACTED] submitted by the Appellant.

Although there were no psychological reports contained within these documents, I gave the scores some weight in reaching my decision because they were DMR records. (A1)

5. A Worksheet on Adaptive Skills was submitted by DMR. It does not indicate when it was completed and draws no conclusions as to the Appellants level of adaptive skill deficits. I did not give great weight to this document. (D8)

6. A Clinical Team Report dated August 12, 1983 relative to guardianship was submitted by the Appellant. The Clinical Team Report found the Appellant to be mentally retarded to the degree that she is incapable of making informed decisions with respect to her financial affairs. It also states that a guardian should be appointed to offer counsel and to make informed decisions with respect to any medical intervention that may become necessary. I gave some consideration to this report when considering the Appellant's adaptive skill limitations. I did not use it in deciding whether the Appellant has significant sub average intellectual functioning. (A2)

7. A letter from the Massachusetts Rehabilitation Commission (Mass Rehab) dated May 8, 2000 indicating that the Appellant is in Priority Category I - an individual with a most significant disability because he/she has a severe physical/emotional impairment which seriously limits multiple functional capabilities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) was submitted by the Appellant. I gave some consideration to this letter when considering the Appellant's adaptive skill limitations. (A3)

8. Documentation from the [REDACTED] indicates that in 1959 when she was 9 years of age the Appellant's Full Scale IQ score on the Stanford-Binet (Binet) was 66. In 1961 when she was 11 years of age, the Appellant's Full Scale IQ score on the Binet was 61. A comment in the record states that she is an extremely disturbed girl. It was thought that her severe emotional disturbance was basic to her intellectual retardation. In 1962 when the Appellant was 12 years of age, she scored a 63 on the Binet. A comment relative to that score was that the score seems a fair indication of her intellectual functioning at that time. In 1963, when the Appellant was 13 years of age, she scored a 69. Finally the [REDACTED] records show that in 1964 when the Appellant was 14 years of age, the Wechsler Adult Intelligence Scale (WAIS) was administered. On that test, she received a Verbal IQ score of 70, a Performance IQ score of 85 and a Full Scale IQ score of 75. The comment relative to these scores was that the Appellant gives the impression of possibly higher ability than is shown. She displayed higher facility with the more concrete tasks than with the academic. The reporter noted that there was a moderately wide scatter and some unevenness in function was likely. The Case Record Folder states that the Appellant's IQ is 66 and gives her a diagnosis of "Moderate" as an "Established Diagnosis, Mental Disorder". There was no indication of the level of education of the testers/reporters or of their certifications within this exhibit. (A1)

The Appellant's School Examination Summary completed by a teacher at the [REDACTED] in June, 1967 when the Appellant was 17 years of age states that the Appellant is reading at the 1.5 grade level and notes that she is really a non-reader. She was at the 1.7 grade level in spelling and the 3.2 grade level in numbers. Social Studies, general information and time telling were fair. Her handwork was deemed to be excellent. (A1)

9. In 1983 when the Appellant was 33 years of age, she obtained a Verbal IQ of 69, a Performance IQ of 81 and a Full Scale IQ score of 74 on the Wechsler Adult Intelligence Scale-Revised (WASI-R) which was administered at the North Shore Children's Hospital. Although no independent Psychological Report accompanied these scores, John R. Higgins, Ed.D. made the following reference to such a report in his evaluation dated May 13, 1983: "It was felt that her verbal deficits involved educational as well as intellectual limitations. The impression was that she has borderline intelligence". There was no indication of the level of education of the tester or his/her certifications within this exhibit. (D6)

10. Dr. Higgins, an employee of the North Shore Children's Hospital administered the WAIS-R on May 3, 1983 when the Appellant was 33 years of age. On that test, the Appellant had a Verbal IQ score of 70, a Performance Score of 84 and a Full Scale IQ score of 74. He concluded that these scores were consistent with her previous testing and place her in the borderline range of ability. He stated that she is clearly more effective in the non-verbal area and in his opinion her verbal difficulties are more due to being placed in a institution during her formative years of schooling than to specific cognitive limitations. Although Dr. Higgins supported the notion of a guardian for the Appellant, he did not offer a diagnosis of mental retardation and raised the issue of pursuing a guardianship under the statutes relating to mental health. He did however, sign the Clinical Team Report supporting the need for a guardian under the category of mental retardation. (D6, A2)

11. Jonathan Davis, Ed.D., a Staff Psychologist at the North Shore Community Mental Health Center administered the WAIS-R to the Appellant on March 7, 1988 when she was 38 years of age. The purpose of the evaluation was to determine eligibility for Mass Rehab services. On this test, the Appellant obtained a Verbal IQ score of 66, a Performance IQ score of 88 and a Full Scale IQ score of 75. The report states that she is functioning in the borderline mentally retarded range. The reporter notes that there is a statistically significant difference between her Verbal and Performance IQ scores. Her Verbal IQ score is in the mildly mentally retarded range and her Performance IQ score (22 points higher) is in the upper part of the low average range. (D7)

12. Jeffrey M. Schumer, Psy. D., a licensed psychologist administered the Wechsler Adult Intelligence Scale-III (WAIS- III) to the Appellant on October 21, 2002 when she was 52 years of age. Dr. Schumer's report states that the Appellant was referred for a psychological evaluation by DMR to assess her current intellectual and adaptive functioning to aid in the determination of eligibility for DMR services. On this test the



Appellant obtained a Verbal IQ score of 66, a Performance IQ score of 83 and a Full Scale IQ score of 72. He noted that the results were very similar to her previous test performances. He stated that her overall cognitive functioning falls within the borderline range. He also noted that her verbal skills are significantly less developed than her visual-motor skills. He did not believe that she met the criteria for a diagnosis of mental retardation.

13. Elina Wayrynen, Ph.D., a licensed psychologist administered the Wechsler Abbreviated Scale of Intelligence (WASI) to the Appellant on February 6, 2003 when she was 53 years of age. Dr. Wayrynen's report states that the Appellant was referred by DMR's Region III with regard to her eligibility for services. On this test the Appellant obtained a Verbal Score of 66, a Performance IQ score of 84 and a Full Scale score of 72. Dr. Wayrynen stated that the Appellant showed much intra subtest scatter in response to Vocabulary items. This means that she would fail more simple items but then score points on more difficult ones. Such subtest scatter was also present on the Similarities subtest. Dr. Wayrynen went on to state that a substantial amount of intra subtest scatter will yield a score that is below the individual's potential. Dr. Wayrynen, like Dr. Davis, noted that the difference between the Appellant's Verbal IQ and Performance IQ is statistically significant. An 18-point difference in those scores is relatively unusual in the general population. She concludes the Appellant's clear and consistent history of low average Performance IQ scores and borderline to extremely low Verbal IQ scores since at least 1964 is not consistent with a diagnosis of mental retardation. (D4)

14. Lawrence Fieman, Ed.D of Lawrence Fieman and Associates Neuropsychology administered the WAIS-III to the Appellant on January 9, 2004 when she was 54 years of age (not 53 as stated in Dr. Fieman's report). Dr. Fieman's report states that he reviewed her record and performed psychological testing to determine her current level of intelligence. On this test, the Appellant obtained a Verbal IQ of 66, a Performance IQ of 78 and a Full Scale IQ of 69. He noted that the Verbal IQ was 12 points lower than the Performance IQ which is not a significant difference. He stated that her Full Scale IQ score is in the range of mild mental retardation. (A4)

13. Dr. Jeffrey Schumer, Psy.D. computed the Vineland Adaptive Behavior Scale on October 21, 2001 and made it part of his report. He found that the Appellant had an age-equivalency of 6 years 2 months in the area of communication, an age-equivalency of 11 years 3 months in the area of daily living skills which include personal care, domestic skills, use of community (work, money management). He stated that she had an age-equivalency of 12 years, 3 months in the area of socialization, which includes interpersonal relationships, play and leisure. He calculated an Adaptive Behavior Composite of 49 and stated that this was low compared to the population as a whole.

14. [REDACTED] testified on behalf of the Appellant. She stated that the Appellant resided at the [REDACTED] until she was 19. She said that the Appellant has behavior problems and can be easily tricked by people. She lives in a rooming house in [REDACTED] and is on disability. Ms. [REDACTED] believes that the Appellant needs protection

because she can't determine how to protect herself. She has very limited cooking skills and poor eating habits. Ms. [REDACTED] went on to say that the Appellant can't read. She can't manage her finances or her medical care. She sees George Freedman, M.D. and Mira Young, a counselor at the North Shore Community Mental Health Center for treatment of kleptomania. She takes Prozac.

On cross-examination in response to questions relative to the Appellant's employment, Ms. [REDACTED] stated that the Appellant had been a Goodwill training program but had trouble with staff and left. She also participated in a workshop program at Digital putting circuit boards together. She worked at Papa Gino's for a very short time. Her most successful employment was working at a shoe factory under her mother's supervision. She stopped working at the shoe factory because it closed.

15. [REDACTED] testified on behalf of the Appellant. He stated that the Appellant cannot function on her own. She doesn't know how to handle problems. She doesn't fear anyone and wants to be friends with everyone. He believes her judgment is impaired.

16. Veronica Wolfe, M.S. testified on behalf of DMR. She stated that she was the Regional Eligibility Manager and explained the criteria one must meet in order to be eligible for DMR services. She said that one must be a resident of Massachusetts, fit the 1992 AAMR definition of mental retardation and have related adaptive deficits. She stated that the Appellant had been found ineligible in 1994 and had reapplied in 2002 supplying DMR with new information. She explained that as the Eligibility Specialist she gathers the relevant information but that the psychologist makes the eligibility decision. She went on to say that after an Informal Conference was held in January of 2003, Dr. Wayrynen did additional testing and that after that testing, the Appellant was still found to be ineligible for DMR services.

17. Elina Wayrynen, Ph.D. testified for DMR as an expert witness. She stated that she has been the Regional Eligibility Psychologist for just over a year. She stated that in the past she was employed as a psychologist by Massachusetts General Hospital and performed forensic evaluations for the Lindemann Mental Health Center. She also worked at Bridgewater State Hospital as a forensic evaluator. She is a licensed psychologist. (D3)

She explained that the WAIS-III is the current version of the WAIS-R. She said that because there is a general drift upwards as time goes on, IQ tests need to be renormed. She indicated that a true IQ score is not attainable and that the standard error of measurement is plus or minus 2-5 points. She stated that the AAMR definition states that in order to be considered mentally retarded an individual has to have an IQ score of below 70 on a valid test. She testified that an individual's IQ score could be artificially suppressed due to his/her state of being: whether they were sick, anxious, not motivated or suffering from mental illness. Individuals who score 4 or below on IQ subtests are considered to be mentally retarded. Different subtest scores show an individual's strengths and weaknesses. Usually mentally retarded individuals have low subtest scores.

Dr. Wayrynen testified that she had reviewed the Appellant's IQ test scores as set out in DMR's submissions and had evaluated the Appellant. She used the WASI, which consists of 4 subtests that measure general intelligence. She reported that the Appellant presented as very friendly and disinhibited. She initially gave effort but then gave up. On this administration, the Appellant obtained a Verbal IQ score of 66, a Performance IQ score of 84 and a Full Scale IQ score of 72. The 18-point difference is clinically meaningful. Dr. Wayrynen stated that such a difference in scores is not common in the mentally retarded. Usually they are impaired in the entire realm of intelligence. She also noted that this result was very consistent with previous psychological tests. She pointed out that the Appellant showed much intra-subtest scatter; she would fail on simpler items and achieve on higher ones. She believes that such scatter is indicative of an individual scoring lower than their true potential. She went on to say that people with mental retardation have uniformly low scores. She believes that the Appellant may have higher abilities even though she doesn't exhibit them. She opined that this might be due to her being institutionalized at Fernald during her formative years. (D7)

Dr. Wayrynen reviewed Dr. Schumer's report relative to the Appellant's adaptive functioning. She stated that his report indicates that the Appellant's adaptive functioning is low compared to the general population. This determination was based on a composite score and is subjective. (D5)

Dr. Wayrynen reviewed the Worksheet on Adaptive Skills completed by James Sumner, Eligibility Specialist. She concluded that while the Appellant is not functioning at an average level she may have been able to learn had she been more exposed to experiences. (D8)

Dr. Wayrynen reviewed the Psychological Evaluation performed by Dr. Higgins and stated that based on his findings, the Appellant was not eligible for DMR services. Dr. Higgins found the Appellant to have some low average and some extremely low scores. Again she states that the pattern is the same. She believes that the Appellant did not develop certain skills during her formative years because [REDACTED] and therefore didn't have exposure. (D6)

Dr. Wayrynen reviewed the Psychological Evaluation performed by Dr. Davis and stated that the results were similar. She testified that the Full Scale score of 75 indicates that the Appellant functions in the borderline range and is not mentally retarded. She noted that the report stated that the Appellant could do some of the math but that it took her more time than is allowed. (D7)

Dr. Wayrynen reviewed the [REDACTED] records including the history since the Appellant's admission. She noted that the Appellant had a stubborn streak. (A1)

Dr. Wayrynen stated that she reviewed the Psychological Evaluation performed by Dr. Fieman. She testified that she disagreed with his statement that there was no significant

difference between the Verbal IQ score (66) and the Performance IQ score (78). (A4)

## 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 2.01, 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. Despite testimony by DMR's expert witness and some reports of psychological testing that conclude that the Appellant functions in the borderline range, I find that the Appellant is a person with mental retardation as defined in DMR's regulations and is in need of specialized supports in at least three adaptive skill areas: communication, self-care and community use. From the evidence presented, it also appears that she needs specialized supports in the areas of health and safety, functional academics and work.

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 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.

The scores that the Appellant obtained on the Binet before age 18 while at [REDACTED] [REDACTED] are all below 70 and although I did not give these scores great weight, I did give them consideration in light of the other evidence presented. None of the Appellant's Full



Scale IQ scores exceed 75 and three are within 2 points of a score of 70. Given the standard error of measurement of plus or minus 2-5 points as explained by D. Wayrynen, I find that all of the Appellant's Full Scale IQ scores come within the AAMR definition of mental retardation. Although some of the reports I considered pointed the significant difference between the Appellant's Verbal and Performance IQ scores and although Dr. Wayrynen gave her opinion as to the meaning of these differences, nothing in the AAMR definition speaks to differences in Verbal and Performance IQ scores and the AAMR fact sheet states that within an individual, limitations often exist with strengths.

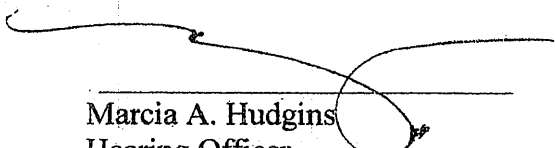
Dr. Wayrynen suggested, as did some of the other testers that the reason for the Appellant's low scores on the Verbal subtests could be attributed to her lack of adequate educational opportunities during her 10-year period of institutionalization. M.G.L. c.123B, section 1 states that a person with mental retardation has inadequately developed or impaired intelligence. It does not speak to why the individual has such inadequately developed or impaired intelligence. The AAMR Fact Sheet states that mental retardation can be caused by social and educational risk factors as well as biomedical and behavioral risk factors. The evidence supports the finding that it is highly likely that the Appellant's institutionalization from the age of 9 to 19 contributed to her inadequately developed or impaired intelligence.

[REDACTED] described the Appellant's functional limitations in their testimony. They testified that the Appellant can't read, can't manage her finances or her medical care and has limited cooking skills. It appears from Dr. Schumer's report that the Appellant has difficulty in the areas of communication, daily living skills, work and money management. He stated that she was low compared to the population as a whole. Dr. Wayrynen's testimony that had the Appellant been exposed to more experiences she may have been able to learn more of the relevant adaptive skills speaks to the deficits she likely experienced during her period of institutionalization. The evidence, including test scores and records from [REDACTED], supports a finding that the Appellant's significantly sub-average functioning and related limitations were manifested before the age 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: April 1, 2004

  
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Marcia A. Hudgins  
Hearing Officer