



The Commonwealth of Massachusetts
Executive Office of Health & Human Services
Department of Mental Retardation
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Elin M. Howe
Commissioner

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September 6, 2007

Re: Appeal of [REDACTED] - Final Decision

Dear Mr. [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,

Elin M. Howe
Elin M. Howe
Commissioner

EMH/ecw

cc: Marcia Hudgins, Hearing Officer
Gail Gillespie, Regional Director
Marianne Meacham, General Counsel
Ellen Killicarslan, Regional Eligibility Manager
John O. Mitchell, Assistant General Counsel
Randine Parry, Psychologist
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 July 18, 2007, at DMR's Central Office in Boston, Massachusetts. Those present for the proceedings were:

[REDACTED]
Randine E. Parry, Ph.D.
John O. Mitchell

Appellant
Appellant's Mother
DMR Psychologist
Attorney for DMR

The evidence consists of documents submitted by DMR numbered D1-10 and approximately one hour of oral testimony. The Appellant offered no 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 (D3, D6)
2. The Appellant is a 20-year old man who currently resides with his mother in Boston, Massachusetts. (D1, D6)
3. Two evaluations of the Appellant's intellectual functioning before the age of 18 were entered into evidence. (D7-8)
4. One evaluation of the Appellant's intellectual functioning after the age of eighteen was entered into evidence. (D9)
5. In December of 1998, when the Appellant was nearly 12 years of age, he was evaluated by a Dr. Murphy and William Mitchell, Ed.D., both employees of Children's Hospital in Boston. On that occasion he was given the Wechsler Intelligence Scale for Children-III (WISC-III). Although the testers reported the Appellant's Verbal and Performance subtest scores, they did not offer Verbal, Performance or Full Scale IQ scores. They noted that the Appellant's profile is felt to be very complicated and found that his cognitive functioning is marked by considerable variability, with performance

that spans from the well below average to the above average range. They went on to say that in view of the variability in his performance, the use of composite and full scale scores (reported to be in the borderline to low average range) is not helpful in that these scores mask the considerable variability in the Appellant's profile. They also state that the Appellant has significant weaknesses in social situations, a tendency toward internal distractibility, and significant weaknesses in social reasoning. The report states that the Appellant's profile is clearly within the spectrum of Pervasive Developmental Disorders (PDD) most consistent with Asperger's Disorder. The Appellant's adaptive skills were assessed through parent report using the Vineland Adaptive Behavior Scales. The testers concluded that the Appellant's adaptive skills spanned from the adequate to severe deficit range with relative strengths in communication and relative weakness in daily living skills. They did not offer a diagnosis of mental retardation. (D8)

6. In February and April of 2004 when the Appellant was 17 years 1 month and 17 years 4 months of age, he was evaluated by Lorine Pitter, School Psychologist employed by the Boston Public Schools. On that occasion the Appellant was given the Wechsler Adult Intelligence Scale-Third Edition (WISC-III) as well as a Wide Range Achievement Test-Third Edition (WRAT-III). The tester stated in the section of her report labeled "Test Results" that the Appellant's functioning on this test was within the borderline range. She did not report the Appellant's Verbal, Performance or Full Scale IQ scores but noted that his Verbal score was at the median of the borderline range and the his Performance score was at the lower limit of the average range. On the WRAT-III, the Appellant exhibited average word decoding and spelling skills but below borderline ability in computational math skills. She did not offer a diagnosis of mental retardation. (D7)

7. In January of 2007, when the Appellant was 20 years of age, he was evaluated by the Boston Public Schools Psychological Service. On that occasion he was given the WAIS-III. The results of this test were as follows: Verbal IQ score - 95, Performance IQ score - 78, and Full Scale IQ score - 85. The report states that the Appellant's Full Scale IQ score places his intellectual functioning in the low average range. The report also notes that the Appellant's unique set of thinking and reasoning abilities make his overall intellectual functioning difficult to summarize by the Full Scale IQ on the WAIS because there are large discrepancies between the scores that compose either the Verbal Scale or the Performance scale. Subtest Scores Summaries show subtest scores ranging from 2 to 10 on the Verbal subtests and from 2 to 15 on the Performance subtests. (D9)

8. Randine Parry, Ph.D., a clinical psychologist testified as an expert witness on behalf of DMR. Dr. Perry stated that she is a psychologist for DMR. She testified that she did the record review relative to the Appellant's eligibility and met with him for about an hour at the informal conference at Children's Hospital. She stated that the Appellant was found ineligible for DMR adult services. She stated that she believed that he had been found eligible for DMR services as a child on the basis of his diagnosis of PDD NOS (not otherwise specified) along with limitations in adaptive behavior. She stated that she determined that the Appellant did not meet the eligibility criteria for DMR adult services on the basis of a record review and explained that her determination was

set out in a document entitled "Eligibility Report". She stated that the basis for her determination of ineligibility was the report generated by the Boston Public Schools when the Appellant was 17 years of age. She explained that at that time the Appellant received a Full Scale IQ score of 76 on the WAIS-III which is mid borderline with a Verbal IQ score of 76 and a Performance IQ score of 79. She also stated that the Appellant received a Verbal Comprehension Index of 91 which she explained was average. (D6-7, D10)

Dr. Parry stated that in order to find someone mentally retarded they must have a score of two standard deviations below the mean which is 69 or below. She went on to say that for DMR eligibility the score must be 70 or below. She stated that in addition to the Full Scale IQ score of 76 which the Appellant received at age 17, he had scores in the mid 70s or higher on tests administered previously. She stated that the Appellant's ability to reason with words and to understand words as measured by the Verbal Comprehension Index was in the lower end of average range. She also stated that the Appellant's Perceptual Organization Index score of 88 was in the upper end of the low average range. (D7)

Dr. Perry explained that at one time the Appellant had been diagnosed with Asperger's Disorder, but that more recently that diagnosis had been changed to PDD NOS because his symptoms did not fit neatly into any category. (D8)

Dr. Parry stated that other information she reviewed was contained in a report from Children's Hospital which summarized testing that had been done. She stated that the report was consistent with the testing done when he was 17. She stated that the only score that was contained in the report was one that was obtained when the Appellant was 10 years of age and that at that time, he received a Full Scale IQ score of 76. Dr. Parry stated that this report failed to reveal anything that would lead to a diagnosis of mental retardation. (D8)

Dr. Parry explained that at the informal conference it was suggested that the Appellant receive further testing to determine if his functioning had gone down. She stated that testing was done in January of 2007 when the Appellant was 20 years of age. She explained that he was given the WAIS-III and that his Full Scale IQ score on that test was 85 which is in the low average range of intellectual functioning. She went on to say that his Verbal IQ score was 78 which is upper borderline and his Performance IQ score is average. She explained that he had difficulty with the arithmetic subtest of the Verbal scale which was consistent with past testing. She stated that there was nothing in this test report that would change her opinion that the Appellant does not meet the criteria for DMR services. (D9)

Dr. Parry agreed that there is no question that the Appellant has adaptive skill deficits in a number of areas. She also agreed that her determination of ineligibility was based on the Appellant's intellectual functioning.

After a careful review of all of the evidence and despite his obvious need for an

ongoing support system, 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.¹ There is no dispute that the Appellant meets the first criterion 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 assessment 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 (c) the individual must have manifested the criteria (a) and (b) before the age of 18. Although there may be some disagreement on the number and/or the specific skill areas where the Appellant has deficits, I find that the Appellant has limitations in his adaptive skills. To the extent that he has such limitations, I am satisfied that the Appellant satisfies prongs (b) and (c). However it is criterion (a) which is at issue.

DMR agreed that the Appellant has adaptive deficits in a number of areas; however, there was no evidence that the Appellant's IQ scores fall within the range contemplated by the AAMR standards.

DMR's mission is to assist individuals who are mentally retarded. It must have a method to determine whether an individual applying for services is disabled due to mental retardation or due to another cause. It is therefore reasonable and permissible for DMR to look to an established definition, such as the AAMR, in determining whether an

¹ DMR changed its definition of "mental retardation" and incorporated the definition of "significantly sub-average intellectual functioning" effective June 2, 2006. Because the Appellant's application for DMR supports was filed before June 2, 2006, the earlier standard applies.

individual applying for services has mental retardation. And according to those authorities, cognitive level, as measured by IQ is a primary factor in determining whether an individual is disabled due to mental retardation.

While the Appellant has a number of deficits and is in need of supports, I find that he is not "mentally retarded" as that term is used in statute and regulation for the purpose of determining eligibility for DMR supports.

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: July 30, 2007



Marcia A. Hudgins
Hearing Officer