

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

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Lieutenant Governor

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March 5, 2008

Frederick M. Misilo, Jr., Esq.
Counselors At Law
Fletcher, Tilton & Whipple, PC
370 Main Street - 12th Floor
Worcester, MA 01608-1779

Re: *Appeal of* _____ *Final Decision*

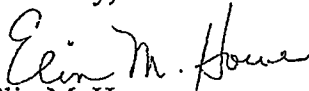
Dear Attorney Misilo:

Enclosed please find the recommended decision of the hearing officer in the above appeal. A fair hearing was held on the appeal of your client's eligibility determination.

The hearing officer 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. Your appeal is therefore approved.

You, or any person aggrieved by this decision may appeal to the Superior Court in accordance with Massachusetts General Laws, Chapter 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
Commissioner

EMH/ecw

cc: Marcia Hudgins, Hearing Officer
Richard O'Meara, Regional Director
Marianne Meacham, General Counsel
Patrick Murphy, Assistant General Counsel
Sara MacKiernan, Hearing Officer (observing)
File

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of _____

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 held was on November 30, 2007 at DMR's Southeast Region in Carver, Massachusetts.

Those present for the proceedings were:

Linda Wolfe	Appellant
Fred Misilo	Appellant's Caseworker at LIFE
Emily Andrus	Attorney for the Appellant
Rick O'Meara	Attorney for the Appellant
Patrick F. Murphy	DMR Regional Director
Sara Mackiernan	Attorney for DMR
	Hearing Officer (observing)

The evidence consisted of documents submitted by the Appellant identified as Exhibit A-C and approximately 1 hour and 15 minutes of oral testimony.

ISSUE PRESENTED

Whether the Appellant is domiciled in Massachusetts in accordance with 115 CMR 6.03(2).¹

SUMMARY OF THE EVIDENCE PRESENTED

1. This Appeal is based on the Appellant's denial of eligibility for DMR services.
2. The Appellant is a thirty-two year old woman who currently resides in Mashpee, Massachusetts (Exhibit A, C)

¹ DMR revised its regulations effective June 2, 2006. Because the Appellant's application for DMR supports was filed before June 2, 2006, the old regulations apply.

3. The following documents were entered into evidence:

The Appellant's Massachusetts and Federal Income Tax Returns from 2005 and 2006 (A-1 and 2)

The Appellant's Mass Health Card (B-1)

The Appellant's Bay State Access Card (B-2)

The Appellant's Massachusetts ID Card (B-3)

Award letter from the MA Department of Transitional Assistance for Food Stamps (Exhibit C)

4. The Appellant's Massachusetts Income Tax Returns indicate that she is a Full Year Resident of the Commonwealth. (Exhibit A-1 and A-2)
5. The Appellant gave testimony concerning her graduation from high school and her relocation to Massachusetts. She stated that she was born in 1975 in Lynchburg Virginia, grew up there and is now thirty-two years of age. She stated that she currently resides in Mashpee, Massachusetts. The Appellant explained that she attended high school in Lynchburg, Virginia where she was enrolled in special education. She stated that after graduating from high school in 1993, she wanted to go to Leslie College, but decided that she was not quite mature enough. She stated that she attended a trial program at the Riverview School located in Massachusetts and continued in the program for four years. The Appellant testified that the program that she attended – GROW stands for Getting Ready for the Outside World. She testified that when she was in her twenties, she attended a program at the Cape Cod Community College known as "Forward". The Appellant testified that after completing GROW, she decided that she wanted to live in Massachusetts because of the beautiful community, friends and because she had lots of people to support her. She stated that she moved into a group home in Hyannis operated by "LIFE" which stands for Living Independent Forever. She testified that after a couple of years, she decided that things were not going right at the group home and decided to move to a condo in Mashpee, Massachusetts where she currently resides. She stated that some of the residents in the condo complex own their own condos and some rent.

The Appellant testified that her parents live in the state of Washington and that her brother and his family live in Maryland. She stated that she visits her parents for Thanksgiving and Christmas and her brother and family for Easter. She testified that she works at the Stop and Shop in Marston's Mills.

The Appellant testified that she pays taxes as a Massachusetts resident. She stated that she has a Mass Health Card, A Bay State Access Card, a Massachusetts

ID card and receives food stamps from Massachusetts. She also stated that she has a bank account at the Cape Cod Five Bank, votes in Massachusetts and wants to continue to live in Massachusetts. The Appellant testified that she did not think that she has ever been under guardianship. (A-C)

On cross-examination, the Appellant stated that she found out about the Riverview School from her mother and father. She stated that she did not in fact attend the Riverview School, but went to the GROW program. She stated that the GROW program has two locations, one in East Sandwich and one in Hyannis. The Appellant agreed that she votes in Massachusetts, but she didn't remember when she last voted. She stated that she receives SSI, but she was not sure of where the money goes although she agreed it does not get deposited to her bank account. She stated that she had never heard the term "representative payee". She stated that she does not have a guardian in Massachusetts or in any other state. She stated that she does not know when her family moved to the state of Washington.

6. Richard O'Meara, Southeast Regional Director testified on behalf of DMR. He stated that he was familiar with the Appellant through the eligibility process. He testified that he was aware that the Appellant was at GROW and is now at LIFE. He testified that he was not aware of any payment mechanisms as to LIFE on behalf of the Appellant. He also testified that he was not specifically aware of any payment mechanisms as to the Appellant's stay at GROW.

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 is domiciled in Massachusetts. 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 she must be in need of specialized supports in three or more of the following seen adaptive skill areas: communication, self-care, home living, community use, health and safety, functional academics and work. The only issue before me is whether or not the Appellant meets the criteria to be considered domiciled in Massachusetts.

115 CMR 6.03 (2) (a) states that for purposes of eligibility for DMR supports, a person shall be considered to be domiciled in Massachusetts if he or she resides in Massachusetts with the intention to remain here permanently or for an indefinite period.

Based on the evidence presented, I find that for purposes of eligibility for DMR supports the Appellant meets the criteria of 115 CMR 6.03 (2) (a) as she resides in Massachusetts and has the intention to remain here permanently.

115 CMR 6.03 (2) (b) 1. states that there shall be a presumption that persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth, which residence was arranged or is being funded by another State, including any agency or political subdivision thereof and any entity under contract with the other State for such purposes are not domiciled in Massachusetts.

Based on the evidence presented, I find that the presumption that the Appellant is not domiciled in Massachusetts as set out in 115 CMR 6.03 (2) (b) 1. has been rebutted. The evidence presented by the Appellant through her testimony was that she originally came to Massachusetts in 1993 to attend a program called GROW. Even if at the time the Appellant attended the GROW program, she was residing in a home or other setting subject to licensure or regulation by the Commonwealth, there was no evidence presented to show that the residence was arranged or funded by another State or any agency or political subdivision thereof or any entity under contract with the other State for such purpose.

Likewise there was no evidence presented to show that the group home where the Appellant resided after leaving the GROW program was subject to licensure or regulation by the Commonwealth nor was there evidence to show that this setting was arranged or funded by another State or any agency or political subdivision thereof or any entity under contract with the other State for such purpose.

Finally there was no evidence presented to show that the Appellant's current residence is subject to licensure or regulation by the Commonwealth nor was there evidence to show that this setting was arranged or funded by another State or any agency or political subdivision thereof or any entity under contract with the other State for such purpose.

115 CMR 6.03 (2) (b) 2. states that there shall be a presumption that persons are not domiciled in Massachusetts who reside in a home or other setting subject to licensure or regulation by the Commonwealth which residence was arranged by a parent, guardian, or family member who is not domiciled in Massachusetts and was not so domiciled at the time of the person's placement.

Based on the evidence presented, I find that the presumption that the Appellant is not domiciled in Massachusetts as set out in 115 CMR 6.03 (2) (b) 2. has been rebutted. There was no evidence presented to show that the Appellant's current residence is licensed or regulated by the Commonwealth. Even if the Appellant's current residence is licensed or regulated by the Commonwealth, there was no evidence presented to show that the Appellant's parents or family members arranged for her move to the residence.

115 CMR 6.03 (2) (b) 3. states that there shall be a presumption that persons, other than those covered under 115 CMR 6.03 (2) (b) 1. or 2., between the ages of 18 and 22 are not domiciled in Massachusetts if they reside in a special education program and their parent or guardian is not domiciled in Massachusetts.

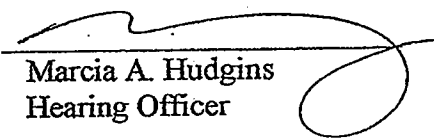
Based on the evidence presented, I find that the presumption that the Appellant is not domiciled in Massachusetts as set out in 115 CMR 6.03 (2) (b) 3. has been rebutted. The Appellant is not a person between the ages of 18 and 22 and is not currently residing in a special education program.

Based the evidence presented, I find that the Appellant came to Massachusetts in 1993 at the age of 18 from Virginia where she had been living with her parents. At that time, she entered the GROW program. I find that after four years she left the GROW program and made a decision that she wanted to live in Massachusetts. I find that she entered a program known as LIFE and moved into a group home in Hyannis where she stayed for a couple of years. I find that following her stay at the group home, she moved into a condo in Mashpee where she continues to live. No evidence was presented to show that any of the Appellant's residences were licensed or regulated by Massachusetts. No evidence was presented to show that any other State arranged or funded any of the Appellant's residences, nor was any evidence presented to show that her parents or family made arrangements for her current residence. I find that the Appellant has not lived in Virginia for over fifteen years and has never lived in the state of Washington where her parents now reside. I find that the Appellant is not under guardianship and has made a choice to live in Massachusetts where she intends to stay.

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: February 28, 2008


Marcia A. Hudgins
Hearing Officer