



The Commonwealth of Massachusetts
Executive Office of Health & Human Services
Department of Mental Retardation
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Lieutenant Governor

JudyAnn Bigby, M.D.
Secretary

Elin M. Howe
Commissioner

Area Code (617) 727-5608
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January 31, 2008

[Redacted]

Re: Appeal [Redacted] Final Decision

Dear [Redacted]

Enclosed please find the recommended decision of the hearing officer in the above appeal. She held a fair hearing record review 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 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: Sara MacKiernan, Hearing Officer
Amanda Chalmers, Regional Director
Marianne Meacham, General Counsel
Douglas White, Assistant General Counsel
Veronica Wolfe, Regional Eligibility Manager
Patricia Shook, Psychologist
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)(115 CMR 6.30 – 6.34) and M.G.L. Chapter 30A. On January 11, 2008 I was assigned to this matter by the Department of Mental Retardation, to review the documents filed and render a decision regarding Mr. Hurd's eligibility for supports provided by the Department of Mental Retardation.

The documents provided to me are:

1. Letter of Assignment dated 1/11/08 (doc 1)
2. Notice of Receipt of Fair Hearing request dated 2/16/07 (doc 2)
3. Request for Fair Hearing dated 2/14/07 (doc 3)
4. Fair Hearing Notice 9/12/07 (doc 4)
5. Fair Hearing Notice 3/8/07 (doc 5)
6. Fair Hearing Notice 10/5/07 (doc 6)
7. Copy of Decree of Guardianship dated 12/1/06 (doc 7)
8. Notice of Determination of Ineligibility dated 12/7/06 (doc 8)
9. Eligibility Determination dated 11/7/06 (doc 9)
10. Psychological Evaluation dated 5/11/06 (doc 10)
11. Draft report of Psychological Evaluation dated 9/21/06 (doc 11)

ISSUE PRESENTED

Whether the applicant meets the eligibility criteria for DMR supports by reason of mental retardation as set out in 115 CMR 6.04(1).

PROCEDURAL HISTORY

1. An Eligibility Determination was made on November 7, 2006.
2. On December 7, 2006 a letter was sent to [REDACTED] and his mother (who is his guardian), stating that [REDACTED] did not meet the Department's criteria for mental retardation and was therefore not eligible for services from the Department of Mental Retardation.
3. On February 14, 2007 [REDACTED] requested a Fair Hearing on the issue of [REDACTED]'s eligibility. [REDACTED] letter of February 14, 2007 indicates that an Informal Conference had been held on January 17, 2007.
4. On February 16, 2007 Notice of Receipt of Fair Hearing Request was sent to [REDACTED] along with a Fair Hearing Information Sheet and the pertinent regulations.
5. A Fair Hearing was scheduled for October 19, 2007 but did not go forward on that date. In October 2007 the parties agreed to have the appeal decided on the record.
6. On January 11, 2008 the case was re-assigned to this Hearing Officer.

SUMMARY OF THE EVIDENCE PRESENTED

[redacted] is now twenty years old (DOB 12/1/88). On 12/1/06, [redacted] mother was appointed Guardian of his person and estate. She was also given the authority to monitor [redacted] treatment with antipsychotic medications according to the court approved Treatment Plan. The Guardianship Petition states that [redacted] "unable to care for himself "by reason of mental illness". Whoever authored the Petition chose neither mental retardation nor physical incapacity as reasons for [redacted] needing a guardian. (doc 7)

[redacted] has a history of emotional abuse and neglect, sexual abuse and severe depression with suicidal ideation. He has reportedly had command hallucinations telling him to harm himself during some of his bouts of depression. He has been in special education throughout most of his school career. [redacted] has had out of home placements in foster care, residential programs and psychiatric hospitalizations. (docs 10 & 11)

The record includes two psychological evaluations completed in 2006. The first (Document 10), was done on May 11, 2006 by John Carvotta, Ph.D., L.Ed.Psy. Dr. Carvotta is a Licensed Educational Psychologist who conducted the evaluation for the Triton Regional Schools Special Education Department in Byfield, MA. Dr. Carvotta administered the following tests:

- Wechsler Adult Intelligence Scale – III
- House, Tree, Person Test
- Clinical Interview
- Reynolds Adolescent Depression Scale
- Roberts Apperception Scale
- Rorschach

Dr. Carvotta noted that [redacted] was cooperative during the testing and appeared to understand the purpose of the tests. On the WAIS III [redacted] scored 79 as a verbal score, 73 as a performance score and 74 as a full-scale IQ. [redacted] functioning within the borderline range of intelligence. He also demonstrated significant difficulty with short term memory. He was significantly below average regarding his visual alertness to detail, analogical thinking and understanding cause and effect relations.

[redacted] was also given several projective tests to assess his emotional functioning. On the Reynolds Adolescent Depression Scale [redacted] earned a raw score of 66 which indicates the presence of symptoms of depression.

On the Roberts Apperception Test [redacted] stories had themes of sadness and anger. Any story which included a father ended on a sad note. The young men in his stories expressed anger and aggression. The results of the Rorschach showed struggles with tension, anxiety and anger. He also demonstrated fair to poor information and integration. There were also clear signs of depression, including suicidal ideation. He also showed signs of insecurity and low self-esteem.

The second Psychological Evaluation in the record was conducted September 21, 2006 by Steven Hirsch, Ph.D., A.B.P.P. The document in the record (Document 11) is labeled "DRAFT". There are several hand written corrections on the document which do not effect the substance of the report. The fax cover sheet attached to the report indicates that this is a draft and the corrected version was not available yet. The report appears to be complete and accurate with the hand written corrections and I have considered this report to be valid.

Health Center in Swansea, MA where [redacted] was then a residential student. Dr. Hirsch notes that the Department of Social Services has been involved with [redacted] family since [redacted] was around six months old. Since around the age of ten years, [redacted] has been in at least three residential programs and been hospitalized psychiatrically in four different hospitals for varying lengths of time. These placements resulted from [redacted] significant behavioral / interpersonal problems and conflicts. His hospitalizations were due to severe depression, increased rage towards others and "unsafe behaviors". [redacted] has also been sexually inappropriate with younger residents of the programs he has been in.

At the time of this evaluation, [redacted] was on probation resulting from a charge of assault and battery. Criminal charges were brought against him after he assaulted a staff member at the residential program. He was on the following medications clonidine, effexor, seroquel, trazadone, thyroid replacement therapy for his under active thyroid and inhaled medication for his asthma. Bill was alert and cooperative during the testing. This evaluation included the following tests:

- Psychodiagnostic Interview
- Mental Status Exam
- Lateral Dominance Test
- Aphasia Screening Test
- Bender Gestalt Test of Visual Perception
- Trailmaking Test Parts A and B
- Wide Range Achievement Test - 3rd Edition
- Wechsler Adult Intelligence Scale - 3rd Edition
- Incomplete Sentence Blank Test (verbally administered by Dr. Hirsch)
- Rorschach Inkblot Test
- Record Review

On the WAIS - III [redacted] had a Verbal Score of 79, a Performance Score of 85 and a Full Scale Score of 80. Dr. Hirsch noted that these scores were significantly higher than resent scores on the same tests. He attributed [redacted] improved performance to his more stable emotional functioning. On the other tests administered [redacted] demonstrated academic delays and deficits. His scores on reading, spelling and arithmetic were well below grade level. [redacted] sub scores on the WAIS III varied from a low of 1 to a high of 19.

[redacted] had a difficult time responding to the projective tests. He has poor frustration tolerance, his impulse control ranges from fair to poor. His defenses are quite brittle and primitive. [redacted] was noted to have a history of intense bouts of depression and during these episodes he experiences suicidal ideation. He has also experienced command hallucinations telling him to kill himself. He has made suicide attempts. [redacted] experiences intense rage and has been aggressive to others. [redacted] is currently being treated with antipsychotic medication.

Dr. Hirsch diagnoses included major depressive disorder, recurrent, severe, post traumatic stress disorder, learning disorder, history of sexual abuse and neglect. Dr. Hirsch, in his report states [redacted] is not mentally retarded".

FINDINGS AND CONCLUSIONS

After a careful review of all the evidence presented, I find that the record shows by the preponderance of the evidence that [REDACTED] does not meet the criteria for eligibility for services from the Department of Mental Retardation.

In order to be eligible for DMR supports, an individual who is eighteen (18) years of age or older must meet the three criteria set forth at 115 CMR 6.04. The person must be (a) domiciled in the Commonwealth, (b) a person with mental retardation as defined in 115 CMR 2.01¹, and (c) 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.

Based on the record before me, I find that [REDACTED] is not a person with mental retardation.

APPEAL

Any person aggrieved by a final decision of the Department may appeal to the Superior Court in accordance with M.G.L. c30A (115 CMR 6.34[5]).

Date: 1/18/08



Sara Mackiernan
Hearing Officer

¹ The Department's definition of "mental retardation" was changed, effective June 2, 2006. The old definition, which incorporated the AAMR's 1992 standard, defined mental retardation as "between seventy (70) and seventy-five (75)" on the applicable intelligence test score range. The new definition of "mental retardation" is "significantly sub-average intellectual functioning". All appeals filed after June 2, 2006 will be considered under the new standard while any appeals filed prior to June 2, 2006 will be decided using the old definition.