The Commonwealth of Massachusetts
Executive Office of Health & Human Services
Department of Mental Retardation
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May 12, 2008

[redacted]

Re: Appeal [redacted] - Final Decision

Dear Ms. [redacted]

Enclosed please find the recommended decision of the hearing officer in the above appeal. A fair hearing was held on the appeal of your daughter'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: Sara MacKiernan, Hearing Officer
Gail Gillespie, Regional Director
Marianne Meacham, General Counsel
Kim LaDue, Assistant General Counsel
Ellen Kilicarslan, Regional Eligibility Manager
Randine Parry, 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. A hearing was held on April 2, 2008 at the Department of Mental Retardation's Fernald Center in Waltham, MA.

Those present for all or part of the proceedings were:

Gisele (Jill) M. Grenon, CAGS, NCSP	School psychologist Learning Center for Deaf Children
Allison Sanes	Mental Health Counselor Learning Center for Deaf Children
Diane Crouse, MSW, M.Ed.	Children Specialist / Case Manager Commission for the Deaf and Hard of Hearing
[redacted]	Mother
Nicole Garrison	Residential Supervisor Learning Center for Deaf Children Appellant
Randine Parry, Ph.D.	Department of Mental Retardation Psychologist
Kim LaDue, Esq.	Department of Mental Retardation Attorney
Stephanie Clark	Interpreter
Hartmut Teuber	Interpreter
Crista Lambert	Interpreter
Donald Gibbons	Interpreter

[redacted] is profoundly deaf. Every word spoken at the hearing was translated first into American Sign Language (ASL) and then broken down, accompanied by facial expressions and gestures and explained to [redacted]. Some of the witnesses testified in ASL as well English. Allison Sanes who is deaf testified in ASL with only occasional English.

The evidence consists of documents submitted by the Appellant numbered A 1 - 3, (A 1 is also D 4; A 2 is also D 6), documents submitted by the Department of Mental Retardation numbered D 1 - 6 , and approximately 2.5 hours of oral testimony.

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). There is no dispute that [redacted] is domiciled in Massachusetts and over the age of eighteen. The only issue is whether or not [redacted] mentally retarded.

SUMMARY OF THE EVIDENCE PRESENTED

[redacted] is now twenty (20) years and four (4) months of age. She has been a residential student at the Learning Center for Deaf Children in Framingham since October 2003. Ms. [redacted] is profoundly deaf. She was diagnosed with bilateral sensorineural hearing loss at two years of age. She communicates in American Sign Language with visual aids such as facial expressions and gestures.

Ms. [redacted] was born by cesarean section after an uneventful pregnancy. At two days of age, she began having seizures. She was treated with anticonvulsive medication until she was nine months old. The medication was discontinued due to the sedating effect it had. Although she is reported to have occasional seizures in childhood, this has not had any apparent effect on her ability to perform in school.

Ms. [redacted] attended numerous school programs prior to The Learning Center for Deaf Children. Prior to May 1990 she attended a pre-school program at the Rhode Island School for the Deaf. In May 1990 the family moved to North Carolina where she attended a pre-school program at a school for the Deaf and a program at an elementary school until October 1991. She was enrolled in an integrated program in Attleboro, MA from November 1991 to January 1992 when she was transferred to the Boston School for the Deaf. In April 1992 she was re-enrolled in an integrated program in Attleboro. She returned to the Boston School for the Deaf in September 1992 where she remained until July 1994. After July 1994 Ms. [redacted] attended a program at the South Shore Educational Collaborative until she was enrolled at the Learning Center for the Deaf's program in Randolph. When she entered middle school, she transferred to the Learning Center's Framingham campus where she became a residential student in October 2003. Dates for her enrollment at the South Shore Collaborative or the Learning Center for Deaf Children's Randolph campus are not recorded in the exhibits, nor were they testified to.

There is agreement among both testimony and every exhibit which outlines Ms. [redacted] educational history that prior to becoming a residential student at The Learning Center for Deaf Children in October 2003 she was absent from school as much as fifty per cent of the time. If one considers the placements at the Boston School for the Deaf and the South Shore Collaborative as two placements in each program, Ms. [redacted] had been enrolled in at least nine programs prior to coming to the middle school at the Learning Center for Deaf Children. Although it is not possible to quantify the effect of the combination of changing schools and the excessive absenteeism on Ms. [redacted] ability to learn in school, it is inconceivable that there was not a significant effect.

At the time of the hearing Ms. [redacted] had been a residential student for four years and four months. As a residential student, Ms. [redacted] stays at school five days a week and goes home on weekends. She lives in a residence with four other students and staff. Everyone at the school communicates in American Sign Language (ASL). The students have the benefits of being immersed in the deaf culture and experience activities of daily life as a deaf person. They go on trips into the community, learn how to shop for groceries and clothing and are given opportunities to learn how to interact with other deaf individuals and with the hearing world.

At school Ms. [redacted] has a job in the school office. With much repetition and supervision she has been able to perform simple tasks. She tries very hard and is very proud of what she has accomplished.

When at home Ms. [redacted] lives with her mother and older sister. Neither Ms. [redacted] mother or sister are fluent in ASL but Ms. [redacted] and her mother agree that they are able to communicate with each other through ASL and gestures.

It is noteworthy that even after four years and four months of immersion in ASL and the deaf world, Ms. [redacted] cannot function independently in any arena of her life. Her language processing disability is so severe that she has no language that she can use to think through daily problems. She cannot shop for groceries with a written list but needs pictures of the items she is to purchase. Despite repeated reminders (almost daily), that she is not to touch the equipment in the wood shop, she continues to use things such as the saw without supervision unless staff are

watching her continuously. She is absolutely stunned and surprised when she is reprimanded for using dangerous equipment. She truly does not remember, if she processed the information in the first place, that she has been told not to do something. She makes no attempt to hide what she has done and in fact has shown what she has done to the teacher quite proudly.

Ms. [redacted] demonstrated her total lack of understanding of basic safety rules at the hearing. Ms. [redacted] was not sworn and did not testify as such. Despite this, I have no reason to think that she was being anything but truthful. During the hearing, it was brought up that Ms. [redacted] had no idea that running out into the street without looking might be dangerous. Her mother had expressed concern about Ms. [redacted]'s understanding of this basic concept. When the interpreter signed and translated what was being said to Ms. [redacted] about what might happen if her dog ran into the street, her responses were that she would have to get the dog, it was her sister's responsibility and it was dog's fault if she chased him into the street and something bad happened.

Ms. [redacted] has a boyfriend at home. Her ability to understand concepts of safe sex are another of her mother's concerns. She has had difficulty with other students at the Learning Center around issues of inappropriate touching. On a Monday morning in the recent past Ms. [redacted] did not get on the bus to return to school because she was "too tired". While in bed with her boyfriend she called the director of the Learning Center on her videophone. As this was being translated at the hearing Ms. [redacted] said that she thought she was calling Allison (her therapist). She stayed on the phone even when she saw the school's director on the phone and said she just called to chat. She replied to the interpreter at the hearing, "[redacted] said go ahead and call, what was I supposed to do?" Mrs. [redacted] also gave examples of her daughter's lack of memory or ability to focus on what she is doing. Recently she put cookies in the oven to bake and then went off and forgot about them until the kitchen was full of smoke. She also flooded the bathroom because she started to run a bath and then forgot about it and went to do something else.

Ms. [redacted] is very open about doing things that she has been told not to do. She either does not remember that she has been told not to do something or did not get the message in the first place. She shows no guilt or remorse for her actions because she doesn't know that she has done something she shouldn't. Ms. [redacted] is friendly and cheerful and gets along well with people. She very much wants to please those around her.

Since Ms. [redacted] eighteenth birthday, her mother has applied to the Probate Court and been granted guardianship of Ms. [redacted] on the basis of mental retardation.

Ms. [redacted] has had a variety of tests of her intelligence and her abiliities. Interpreting the results of the testing done on Ms. [redacted] is difficult because she is profoundly deaf and it is accepted that many of the standard intelligence tests are not normed for deaf individuals. It is also difficult to compare testing over time because she has been given different tests.

The earliest testing available to me was done at Childrens Hospital Medical Center on April 30, 1997 when Ms. [redacted] was nine years ten months of age. **(DMR 2)**
At that time, the following tests were given:

TEST	SCORE	
Boston Naming Test	6 years 6 months	(age equivalent)
Illinois Test of Psycholinguistic Abilities Auditory Association	3 years 7 months	
Craig Lipreading Inventory Word Recognition	25%	

Sentence Elicitation Task delayed for age; grade appropriate (she was in a primary classroom with other students 6 to 7 years of age)

Passage Comprehension subtest of the Woodcock Reading Mastery Tests could not complete any items

KeyMath Diagnostic Arithmetic Test, WRAT III, WISC III, Rey Osterreith Complex Figure Test

WISC III (only performance cluster of subtests)

Picture completion	8
Coding	7
Picture Arrangement	4
Block Design	8
Object Assembly	11

PIQ 84 (Low Average Range)

The verbal subtests were not given and therefore no full IQ score can be derived from the performance scores alone.

Ms. [redacted] was next tested at The Learning Center for Deaf Children on December 15, 2003. Age sixteen years and 6 months **(DMR 4, A 1)**

WISC III	Performance Scale		Verbal Scale	
	Picture Completion	11	Information	(1)
	Coding	6	Similarities	(1)
	Picture Arrangement	16	Arithmetic	(1)
	Block Design	8	Vocabulary	(1)
	Object Assembly	13	Comprehension	(1)

Performance IQ 106

Although not an appropriate measure of intelligence for deaf students, the verbal portion of the WISC III can give some indication of how language is used for learning. Deaf students are expected to have a 20 point discrepancy between their verbal and performance scores on the WISC III. [redacted] has a 60 point discrepancy. (Performance 106; Verbal 46)

CTONI	Subtest	Standard Score	Percentile
	Pictorial Analogies	2	<1
	Geometric Analogies	7	16
	Pictorial Categories	7	16
	Geometric Categories	14	91
	Pictorial Sequences	7	16
	Geometric Sequences	7	16

Pictorial Standard Score	**70**
Geometric Standard Score	**96**

On the UTONI, which is used with deaf students because it does not use verbal instructions or responses, [redacted] demonstrated a significant discrepancy in her scores. Her Pictorial Standard Score of 70 is in the 2nd percentile and is considered significantly impaired. This indicates that Jennifer has extreme difficulty in using language for thinking.

DIFFERENTIAL ABILITY SCALE (DAS)

	Score	Grade equivalent
Basic Number Skills	.1	2nd
Word Reading		1.4

[redacted] demonstrated significant weakness in her command of a native language (ASL) and also significant weakness in visual memory. Both of these are necessary skills for becoming a good reader. She also demonstrated a weak working memory and had extreme difficulty shifting from one mind set to another.

[redacted] was next tested at The Learning Center for Deaf Children on 10/24/05 **(DMR 6, A 2)**

Age 18 years 4 months

Vineland Adaptive Behavior Scale

Domain	Standard Score	Age Equivalent
Communication	62	3 – 7 years
Daily Living	68	8 – 10 years
Socialization	63	3 – 8 years

The forms were filled out by the residential staff at the Learning Center. They made accommodations for the fact that [redacted] communicates in ASL and not spoken English. The results are an accurate indication of [redacted] abilities.

Leiter Fluid Reasoning
Composite score 71

"[redacted] strengths in the areas of visualization and spatial skills significantly skewed the overall results of a full IQ score of 80." (G. Grenon MA,CAGS) **(DMR 6)**

Ms. [redacted] was most recently tested at The Learning Center for Deaf Children on 9/18/07 **(A 3)**

Age 20 years 4 months

Skill Areas	Scaled Score
Communication	
Community Use	3

WAIS III

Performance Subtests	Scaled Score	Verbal Subtests	Scaled Score
Picture Completion	8	Vocabulary	(1)
Coding	7	Similarities	(5)
Block Design	11	Arithmetic	(2)
Matrix Reasoning	13	Digit Span	(3)
Picture Arrangement	10	Information	
		Comprehension	(2)
Performance IQ	**98**	**45th percentile**	
Verbal IQ	**58**	**.3ths percentile**	
Full IQ	**73**	**4th percentile**	

ABAS (teacher form)

Functional Academics	2
Home Living	5
Health and Safety	2
Leisure	4
Self-Care	7
Self-Direction	5
Social	5

Composite	Composite Score	Percentile
GAC	60	.4ths
Conceptual	63	1st
Social	70	2nd
Practical	69	2nd

FINDINGS AND CONCLUSIONS

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 2.01[1], 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.

[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.

Since Ms. [redacted] mother and guardian filed this appeal prior to June 2, 2006, the definition of mental retardation which incorporated the AAMR's 1992 definition is applicable. A person with mental retardation was defined as a person who scored "between 70 and 75 on the applicable intelligence test score range." The AAMR has revised the definition of mental retardation a number of times. The 1992 definition which is incorporated into the Department's definition applicable here, refers to "substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. " (AAMR definitions)

SPECIFIC FINDINGS

1. Ms. [redacted] ability to communicate in her native language, ASL, is severely limited. Her ability to understand what is being communicated to her is severely limited.

2. Ms. [redacted] ability to care for herself is limited. She needs reminders, supervision and prompts to maintain herself. She has complained at school that she is having difficulty seeing because her glasses are dirty but needs to be told to wash them.

3. Ms. [redacted] cannot safely use appliances in the home such as the stove or the bath without supervision.

4. Ms. [redacted] inability to understand and remember basic safety rules such as not running into the street make her vulnerable to injury if living unsupervised.

5. Although now twenty years old, Ms. [redacted] academic functioning in basic areas such as reading and arithmetic are still at the first or second grade level. She cannot read a shopping list and needs to have pictures in place of words.

6. Ms. [redacted] can only do very simple tasks in a work situation where she is supported and supervised closely.

7. Ms. [redacted] intelligence tests are difficult to evaluate given the variety of tests and the fact that she is profoundly deaf. Giselle Grenon is the school psychologist at The Learning Center for Deaf Children. She has done the three most recent sets of tests on Ms. Simeon and she also knows Ms. [redacted] from being at the school. She is a National Certified School Psychologist and is experienced in testing deaf students. In addition to her three reports Ms. Grenon testified at the hearing. I find that she is an expert in testing and evaluating deaf students. Ms. Grenon testified that although Ms. [redacted] has scores on some tests which are higher than the level at which a person is identified as mentally retarded, the vast discrepancies between her performance and verbal scores; her inability to function independently across all spheres of adaptive functioning; the fact that Ms. [redacted] has made very little progress in four years as a residential student where she has been immersed in ASL and the deaf culture lead to the conclusion that Ms. [redacted] is mentally retarded. I find Ms. Grenon to be credible as well as knowledgeable.

8. Ms. [redacted] functional disabilities are not caused by her deafness.

9. Ms. [redacted] has no known history of head injury or other neurological insult. Her seizures in early childhood are not believed to impact her present functioning.

10. Ms. [redacted] has been functioning much below what would be expected of her since early childhood. She has been in special education programs since pre-school. She has had significant delays in all areas of functioning since childhood.

After a careful review of all the evidence presented, I find that Ms. [redacted] has shown by a preponderance of the evidence that she is mentally retarded and is eligible for supports from the Department of 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: April 22, 2008

Sara Mackiernan
Hearing Officer