



The Commonwealth of Massachusetts
Executive Office of Health & Human Services
Department of Mental Retardation
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JudyAnn Bigby, M.D.
Secretary

Elin M. Howe
Commissioner

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February 1, 2008

Re: Appeal of [REDACTED] Final Decision

Dear [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 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: Deirdre Rosenberg, Hearing Officer
Gail Gillespie, Regional Director
Marianne Meacham, General Counsel
John O. Mitchell, Assistant General Counsel
Randine Parry, Psychologist
File
Binder

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. c. 30A. A fair hearing was held on September 19, 2007 at the Department of Mental Retardation's Central Office in Boston, Massachusetts. Those present were:

[REDACTED]
John Mitchell, Esq.
Randine Parry, Ph.D.

Appellant
Appellant's Sister
Attorney for the Department
Psychologist for the Department

The evidence consists of the following exhibits and approximately one hour of oral testimony:

- 1) Curriculum vitae of Dr. Randine Parry, Ph.D.
- 2) Application for DMR Eligibility, 3/14/06
- 3) Adult Intake Information Form, 6/10/06
- 4) Eligibility Report, 6/7/06
- 5) Ineligibility Letter of Ellen Kilicarslan, 6/14/06
- 6) Ineligibility Letter of Ellen Kilicarslan, 11/17/06
- 7) Appellant's Request for a Fair Hearing, 8/31/06
- 8) Children's Hospital Psycho-Educational Assessment, 12/4/75
- 9) Children's Hospital Psycho-Educational Assessment, 8/21/81

ISSUE

Whether the Appellant meets the eligibility for DMR services by reason of mental retardation as defined in 115 CMR 6.03(1).

BACKGROUND

The Appellant is an almost forty-six year old man who lives with his younger brother in Brighton, Massachusetts. He was born in Puerto Rico and came to the United States when he was nine years old. Mr. [REDACTED] has a history of academic and vocational limitations. He attended a number of schools in the Boston area on a sporadic basis and left school before graduating from high school. It appears that Mr. [REDACTED] has never held a job. In addition to his academic difficulties, he has a mild conductive hearing loss in both ears, and suffers from asthma and obesity. Finally, according to one evaluation in the record, Mr. [REDACTED] has undergone several eye operations to correct defects, apparently successfully. According to his sister, [REDACTED] her brother is very involved in his church, attending services or some kind of church activity on a daily basis. Otherwise, he spends his time at home.

SUMMARY OF THE EVIDENCE

The first cognitive evaluation in the record is dated December 4, 1975. The assessment was conducted at Children's Hospital, in Boston, Massachusetts, when Mr. [REDACTED] thirteen years old (Exhibit #8). The clinician who evaluated him, whose identity is unknown, reported that Luis showed numerous signs of neurological dysfunction (lack of lateralization, poor motor coordination, incomplete visual-motor control, and poor sequencing skills) (Exhibit #8, p. 3). The report states that the Appellant's performance on the Spanish edition of the Wechsler Intelligence Scale for Children (WISC) was in the normal range. The specific results of the test were not given. Mr. [REDACTED] reading and decoding skills were described as being at the second-grade level, which this clinician attributed in part to his, the Appellant's, bilingualism.

A second psycho-educational assessment of the Appellant was performed at Children's Hospital on August 12, 1981 (Exhibit #9). Dr. Joanne McMillan, who conducted the testing, reported that Mr. [REDACTED] scores "indicate that he is functioning low in the low-average range of verbal ability, the average range in terms of performance ability, and in the average range of intellectual ability overall" (Exhibit #9, p. 2). She also stated that his ability to solve arithmetic problems mentally fell in the average category. However, apparently Mr. [REDACTED] is still performing on the second grade level academically at this time, and Dr. McMillan stated that she found it hard to account for the fact that although he had average intellectual ability, he had made very little academic progress (although surely the fact that his school attendance was spotty—he had on at least one occasion missed an entire year of school—had something to do with this).

Dr. Randine Parry, Regional Psychologist for the Department, made her determination that the Appellant was not eligible for services based on the IQ scores reported in the two cognitive evaluations discussed above (Exhibits #8 and #9), and I agree with her decision. There was also evidence in the record regarding Mr. [REDACTED]

adaptive skills, but since his IQ exceeds the Department's standard, it is not necessary for me to discuss this prong of the eligibility criteria.

[REDACTED] who is the Appellant's sister, testified that she had documentation from the Social Security Administration stating that her brother receives benefits from that agency because he is mentally retarded. However, she did not have these records at the Fair Hearing. While Social Security may have determined that the Appellant is entitled to its benefits by reason of "mental retardation," it does not follow that he meets DMR's criteria for that condition. It is likely that these two agencies use different standards in defining mental retardation. The only definition that is relevant here is that of the Department of Mental Retardation. The Department's definition of mental retardation at the time [REDACTED] applied for benefits was an "IQ of approximately 70 to 75 or below."

FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, and despite [REDACTED] need for certain services, I find that he 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.

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 was defined at 115 CMR 2.01 when he applied for Department of Mental Retardation services (see footnote 1 below).

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."

¹ Effective June 2, 2006, DMR changed its definition of mental retardation to "significant sub-average intellectual function" as defined by "intelligence indicated by a score of 70 or below..." See 115 CMR 2.00. The Appellant filed his appeal before the new definition was adopted.

Consistent with its statutory mandate, DMR had adopted the American Association on Mental Retardation (AAMR) standards as the clinical authority to which it referred in determining whether an individual has "inadequately developed or impaired intelligence," and the AAMR standard was in effect when [REDACTED] applied for DMR services. 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 include 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 criteria (a) and (b) before the age of 18.

I concur with the Department of Mental Retardation that the Appellant does not have "inadequately developed or impaired intelligence." Although the two cognitive reports in the record did not provide numerical IQ scores, both state that his intelligence is in the low average (80 to 85) to average (90-110) range. Clearly, this exceeds the Department's standard of "approximately 70 to 75 or below." Therefore, I uphold DMR's decision that [REDACTED] is ineligible for its services.

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:

January 16, 2008

Deirdre Rosenberg
Deirdre Rosenberg
Hearing Officer