



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

Mitt Romney
Governor

Kerry Healey
Lieutenant Governor

Timothy Murphy
Secretary

Gerald J. Morrissey, Jr.
Commissioner

Area Code (617) 727-5608
TTY: (617) 624-7590

March 16, 2006

E. P. [redacted]
c/o C. [redacted]
[redacted] MA [redacted]

Re: Appeal of C. P. [redacted]
Final Decision

Dear Ms. P. [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,

Gerald J. Morrissey, Jr.
Gerald J. Morrissey, Jr.
Commissioner

GJM/ecw

cc: Deirdre Rosenbert, Hearing Officer
Gail Gillespie, Regional Director
Marianne Meacham, General Counsel
Robertta Lewonis, Regional Eligibility Manager
Kim LaDue, Assistant General Counsel
Victor Hernandez, Field Operations Senior Project Manager
File

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of C [REDACTED] P [REDACTED]

This decision is issued pursuant to the regulations of the Department of Mental Retardation (DMR or Department), (115CMR 6.30-6.34) and M.G.L. c. 30A.

On March 28, 2005, the Appellant, C [REDACTED] P [REDACTED] was officially denied services by the Department on the grounds that she did not meet its definition of mental retardation, as set forth at 115 CMR 2.01. Ms. P [REDACTED] appealed that decision, and a fair hearing was scheduled for January 13, 2006. Pursuant to 801 CMR 1.02(10)(b), the Appellant waived the hearing and indicated that she wished to have the Department's decision issued based on the evidence submitted by her and DMR. DMR has submitted the Appellant's case file which consists of eleven exhibits. It is upon this material that my decision is based. A list of the Department's exhibits is as follows:

1. Ineligibility Letter dated March 28, 2005
2. Eligibility Report dated March 24, 2005
3. Application for DMR Eligibility
4. Adult Intake Form dated November 17, 2004
5. Psychological Evaluation dated June 17 and 24, 2004
6. Psychological Evaluation dated March 11, 2001
7. Report of Achievement Testing dated October 13, 2004
8. Concord Family and Youth Services, Inc., Discharge Summary
9. [REDACTED] Treatment Plan
10. [REDACTED] Education Quarterly Report dated August 16, 2004
11. Individualized Education Plan dated 10/15/04 to 10/15/05

ISSUE

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

BACKGROUND

The Appellant is an 18 year old young woman who is a residential student at the [REDACTED] which is a Department of Social Services Facility located in [REDACTED] Massachusetts. She has been in DSS custody since the age of ten.

C [REDACTED] was born to a drug addicted mother who died four months after her daughter's birth. She lived with her grandmother for five years but was removed from her custody because of suspected drug activity within the household. Subsequently, she was placed in foster care with the F [REDACTED] family, who later adopted her. In 1995 a 51A report was supported on allegations of neglect and emotional maltreatment of C [REDACTED] and the F [REDACTED] son [REDACTED]. After two more 51A reports were supported, the P [REDACTED]'s parental rights were terminated in 1997. The Appellant then entered the [REDACTED]. In 1999 she transitioned into a DARE home, followed by placements at the [REDACTED] in [REDACTED], [REDACTED], and the [REDACTED] (Exhibit #8). She was discharged from [REDACTED] on January 13, 2003, and has apparently been at [REDACTED] from that date to the present.

Throughout her life, C [REDACTED] has displayed a variety of serious psychiatric symptoms, including self-injurious and suicidal behavior, aggression, stealing, and other high risk behaviors. She is currently diagnosed with Mood Disorder and PTSD (Exhibits #5 and #9).

SUMMARY OF THE EVIDENCE

The Appellant's file contains cognitive evaluations from 1999, 2001, and 2004. Her most recent evaluation was conducted on June 17, 2004 and June 24, 2004, when she was 17 years old, at Concord Family and Youth Services, Inc. (Exhibit #5). The test administered was the WAIS III, and she received the following scores:

Verbal IQ	81 (low average)
Performance IQ	98 (average)
Full Scale IQ	88 (low average)

As can be seen, all of her scores are significantly above the mentally retarded category.

Previously, in 2001, C [redacted] was tested by Dr. Judy Bevis, a private licensed psychologist, at the request of the [redacted] (Exhibit #6). C [redacted] was 14 years old at the time of this evaluation. Dr. Bevis administered the WISC-III intelligence test, among others. Her IQ scores were as follows:

Verbal IQ	83 (low average)
Performance IQ	79 (borderline)
Full Scale IQ	79 (borderline)

Although the Appellant's scores were somewhat lower than the results from 2004, they still did not fall into the mentally retarded category.

C [redacted] was also apparently tested in 1999 when she was twelve years old at the Franciscan Children's Hospital. This evaluation is not included in the exhibits before me, but is referenced in Dr. Bevis' 2001 assessment. Dr. Bevis reports that the Appellant received a Verbal IQ of 85, a Performance IQ of 84, and a full Scale IQ of 84.

No contrary evidence regarding the level of her IQ was in the record before me, nor was there any evidence regarding the Appellant's adaptive skills.

FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, I find that the Appellant has failed to show by a preponderance of the evidence that she 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) she must be domiciled in the Commonwealth,
- b) she must be a person with Mental Retardation as defined in 115 CMR 2.01, and
- c) she 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 she meets that criterion. However, I find that she is not mentally retarded as that term is defined at 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 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.

On the three intelligence evaluations administered to the Appellant, described above, her IQ was found to be in the borderline or low average range. She received no scores whatsoever in the range of "approximately 70 to 75 or below," which is the IQ range in which it is possible to conclude an Appellant is mentally retarded.

Therefore, I find that the Appellant is not "mentally retarded" as that term is used in statute and regulation for the determination of 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: January 30, 2006 Deirdre Rosenberg
Deirdre Rosenberg
Hearing Officer