

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

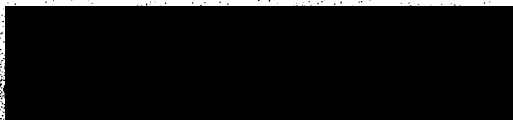
Kerry Healey
Lieutenant Governor

Timothy Murphy
Secretary

Gerald J. Morrissey, Jr.
Commissioner

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November 18, 2005



Re: Appeal of [REDACTED]
Final Decision

Dear Mr. [REDACTED] Ms. [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 and conclusions of law. 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.
Commissioner

cc: Deirdre Rosenberg, Hearing Officer
Gail Gillespie, Regional Director
Marianne Meacham, General Counsel
Roberta Lewonis, Regional Eligibility Manager
Randine Parry, Psychologist
Kim LaDue, Assistant General Counsel
Victor Hernandez, Field Operations Senior Project Manager
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 or Department), (115CMR 6.30-6.34) and M.G.L. c. 30A.

On October 21, 2003, the Appellant, [REDACTED] was officially denied services by the Department on the grounds that he did not meet its definition of mental retardation, as set forth at 115 CMR 2.01. Mr. [REDACTED] appealed that decision, and a fair hearing was scheduled for June 10, 2005. Pursuant to 801 CMR 1.02(10)(b), the Appellant's father, [REDACTED] waived the hearing and indicated that he wished to have the Department's decision issued based on the evidence submitted by him and DMR. By letter dated June 10, 2005, Kim M. LaDue, counsel for the Department, informed Mr. [REDACTED] that any evidence he wished to submit must be done so within 30 days of the date of her letter, that is, July 10, 2005. As of the date of this decision (August 29, 2005) no material has been received from the Appellant or his family. DMR has submitted the Appellant's case file which consists of six exhibits. It is upon this material that my decision is based. A list of the Department's exhibits is as follows:

1. Children's Evaluation Center, Report of Neuropsychological Evaluation.
Date of Evaluation: 11/17, 11/21, and 12/5/2000.
2. Educational Enhancement Center, Report of Neuropsychological Evaluation.
Date of Evaluation: 5/9, 5/12, and 5/28/97.
3. Children's Evaluation Center, Report of Neuropsychological Evaluation.
Date of Evaluation: 5/2/03.
4. [REDACTED] Achievement Screening Testing, October 1998.
MCAS Report
Teacher's Report Form
Stanford Standardized Achievement Test.
5. Individualized Education Program (IEP), 5/31/02-5/31/03.
6. Eligibility Report of Randine Parry, Ph.D., DMR's expert, dated 6/10/05.

ISSUE

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

BACKGROUND

Mr. [REDACTED] is a 21 year old man who lives with his parents in [REDACTED] Massachusetts, and attends the [REDACTED] program in [REDACTED] Massachusetts. Mr. [REDACTED] has received Special Education services throughout his educational career. He attended the [REDACTED] Public Schools from pre-kindergarten to the sixth grade, first in a language-based program, and then, from the fourth to sixth grades, in an inclusion program. For the seventh grade, the Appellant transferred to the [REDACTED] in [REDACTED] a private school for students with learning disorders, where he was a student until 2000. At that time he was asked to leave [REDACTED] as a result of inappropriate sexual behavior. He has attended the [REDACTED] program since 2001. Mr. [REDACTED] has been diagnosed as having a "global neurodevelopmental disorder" (Exhibit 2, report of Educational Enhancement Center, 1997, Penny Prather, evaluator), and Pervasive Developmental Disorder. (Exhibit 1, Children's Evaluation Center, Ann Helmus, evaluator)

SUMMARY OF THE EVIDENCE

Mr. [REDACTED]'s file contains evaluations from 1997, 1998, 2000, and 2003. In 1997, when he was thirteen, the Appellant was seen by Penny Prather, Ph.D., Pediatric Neuropsychologist, as referenced above. (Exhibit 2) She concluded that Jay's neuropsychological profile was consistent with "a global neurodevelopmental disorder.... manifest in very slow processing and retrieval generally, and reduced initiation and spontaneous production," and that his "cognitive abilities fall in the low average to borderline range on formal testing." He was administered the Wechsler Intelligence Scale for Children, 3rd Edition (WISC III), among others. His results on the WISC were as follows:

Verbal IQ	81 (low average range)
Performance IQ	71 (below average range)
Full Scale IQ	74 (borderline average)

Mr. [REDACTED]'s academic achievement was measured in 1998 when he was 14 years old by the [REDACTED] of [REDACTED] Massachusetts. (Exhibit 4) On the Wide Range Achievement Test-3, the appellant's reading and spelling tests were both at the High School level, while in arithmetic he scored at the Grade 6 level. It does not appear that IQ tests were administered. Neither the [REDACTED] tester nor Randine

Parry, the Department's expert, in her review of these scores (Exhibit 6), explained the relationship between these test results and IQ.

In December, 2000, the Appellant was assessed by Ann A. Helmus, Ph.D., of the Children's Evaluation Center. (Exhibit 1) The Evaluation Center is located in Watertown, Massachusetts. Again, the WISC III was used to determine Mr. Fraser's IQ. The results were as follows:

Verbal IQ	71 (below average range)
Performance IQ	81 (low average range)
Full Scale IQ	74 (borderline average)

These results are consistent with his prior test scores. In addition, Ms. Helmus repeatedly mentions the Appellant's "strikingly slow work pace," as did all persons who have tested him over the years. Ms. Helmus also states that both [redacted]'s parents and teachers describe him as "frequently... unhappy or depressed." He takes medication for depression and for obsessive-compulsive disorder (OCD). (Exhibit 1) According to Ms. Helmus, on the Achenbach Child Behavior Checklist, Jay's parents report that "he has virtually no interaction with peers outside of school." She further opines that the Appellant is "at risk for the development of a serious psychiatric disorder characterized by problems distinguishing fantasy from reality."

[redacted] was again evaluated by Dr. Helmus in 2003, when he was 19 years old. At this time he showed a significant increase in his Verbal IQ (87 as compared to the 71 he achieved when he was tested in 2000). Also, "significant gains were seen on the arithmetic and comprehension subtests." Ms. Helmus attributes some of this improvement to the differences between the tests administered in 2000 and those he took in 2003 (WISC-3 versus WAIS-3), but it seems apparent that not all improvement was simply due to the different tests used. The results were as follows:

Verbal IQ	87 (low average range)
Performance IQ	89 (low average range)
Full Scale IQ	87 (low average range)

Ms. Helmus writes that despite cognitive skills in the low average range, Mr. [redacted] "does not function at the level of peers with similar cognitive abilities. As is often seen in individuals with PDD, [redacted] has difficulty utilizing his cognitive abilities for effective daily functioning."

Mr. [redacted]'s file also includes his Individualized Education Plan for 5/31/02-5/31/03, but I did not rely on this in making my decision because the IEP did not address his IQ.

FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, and despite Mr. Fraser's obvious need for continuing support, I find that the Appellant 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,
- f) he must be a person with Mental Retardation as defined in 115 CMR 2.01, and
- g) 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 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 intelligence tests administered when the Appellant was 13 and 16 years old, Mr. [REDACTED] received a Full Scale IQ score of 74, which would have permitted me, applying the above described AAMR standard, to find that he was retarded. However, when Mr. [REDACTED] was tested in 2003 (by the same individual who tested him in 2000), he achieved a Full Scale IQ of 87, which puts him in the low average intelligence range. While his testor states that the later test differs from the ones administered to Mr. [REDACTED] previously (WISC-3 versus WAIS-3), and that this difference accounts for some of the 13 point increase in his score, she implies that the difference in the tests does not account for all of the increase seen. Therefore I find that the Appellant's 2003 IQ scores were above the cut-off score of 75, even after allowing for any inflation that may have resulted from the difference between the two tests.

My decision was also influenced by Mr. [REDACTED]'s performance on the 1998 Achievement Screening Testing (Exhibit 4). Mr. [REDACTED] was 14 years old at the time of this evaluation. According to the testor, his reading and spelling tests were both at the High School level. Although achievement testing cannot and should not be the basis for establishing an individual's IQ, the Appellant's results on these tests suggest cognitive abilities not typically seen in a person who is mentally retarded (as defined by DMR).

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.

There was also evidence relative to the Appellant's impaired adaptive functioning. Because the Appellant failed to show that he has significantly sub-average intellectual functioning, which is a statutorily mandated first step in establishing eligibility, it was not necessary for me to consider his adaptive functioning in order to reach my decision.

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: October 14, 2005

Deirdre Rosenberg
Deirdre Rosenberg
Hearing Officer