

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

Mitt Romney  
Governor

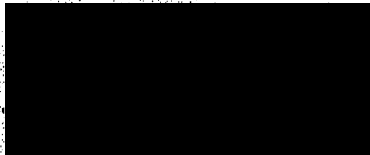
Kerry Healey  
Lieutenant Governor

Ronald Preston  
Secretary

Gerald J. Morrissey, Jr.  
Commissioner

Area Code (617) 727-5608  
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March 18, 2005



Re: Appeal of [REDACTED]  
Final Decision

Dear Mr. [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.  
Commissioner

cc: Deirdre Rosenberg, Hearing Officer  
Marianne Meacham, General Counsel  
Kim LaDue, Regional Attorney  
Gail Gillespie, Regional Director  
Susanna Chan, Regional Eligibility Manager  
Randine Parry, Psychologist  
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) (115CMR 6.30 - 6.34) and M.G.L. c. 30A. A fair hearing was held on January 18, 2005 at the Fernald Development Center in Waltham, Massachusetts. Those present were:

[REDACTED]  
Kathy Vasell  
Kim LaDue  
Randine Parry, Ph.D.

Appellant  
Guidance Counselor, [REDACTED]  
Attorney for DMR  
DMR Psychologist

The evidence consists of documents submitted by DMR numbered 1-10, and approximately one and one quarter hours of oral testimony.

ISSUE

Whether the Appellant meets the eligibility 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 currently resides at [REDACTED] a group home run by [REDACTED] is located in [REDACTED] Massachusetts, on the [REDACTED] campus. He receives life skills training at [REDACTED] and also attends the [REDACTED] for his academic education. Mr. [REDACTED] has lived at [REDACTED] for approximately one year. Prior to that time, the Appellant lived at home with his mother and brothers, and since 1998, attended day school at [REDACTED]. Previously, he attended a day program at [REDACTED] in [REDACTED] Massachusetts, while residing with his family.

The Appellant applied for DMR supports on May 6, 2003. By letter dated September 22, 2003, the Department denied his application on the ground that he did not meet its definition of mental retardation, as set forth at 115 CMR 2.01. Mr. [REDACTED] timely appealed the denial of eligibility. Subsequently, on April 8, 2004, the DMR Regional Director held an informal conference with the Appellant. The Department upheld its original decision and so informed Appellant. Today's fair hearing on this decision is held pursuant to Mr. [REDACTED]'s timely presented request for same.

## SUMMARY OF THE EVIDENCE

██████████ currently receives educational services, including his residential placement at ██████████ pursuant to Chapter 766, the Massachusetts Students with Disabilities Act. Under Chapter 766, a child who is deemed to have special needs is entitled to receive educational services that meet the individual's needs resulting from his or her disability. Chapter 766 does not provide any services after a special needs student turns 22 years of age. Mr. ██████████ will turn 22 this June. He testified that he is greatly concerned about what will happen to him when he is no longer eligible for services under Chapter 766. Specifically, he is concerned about where he will live. Before he moved to ██████████ approximately one year ago, he lived with his mother and two younger brothers. He testified that his mother is always sick, and that this makes living at home an extremely depressing experience. He stated that he was very satisfied with his ██████████ placement.

Kathy Vasell, a guidance counselor at ██████████ who has taken it upon herself to see the Appellant through his quest for continuing services, testified that although Appellant's mother is a loving individual, she cannot provide the supports her son requires. At ██████████ there is 24 hour on site supervision. In addition, the staff works with Mr. ██████████ to develop life skills, such as budgeting and time management. Mr. ██████████ also attends ██████████ where the curriculum is largely academic. Ms. Vasell stated that the Appellant has made great improvements since he has lived at ██████████ although in the last few months he has been distracted by his concerns regarding his future, with the result that the gains he had made during his residency there have deteriorated. Ms. Vasell also testified that she believed that Mr. ██████████'s IQ scores, as reflected in his record, overstate his abilities.

Several of the reports in the Appellant's file refer to his multiple medical problems (Exhibits 5, 6, 7, and 8). He was born with numerous birth defects (hypospadias and encephalocele). At three months of age he was hospitalized for repair of the encephalocele. Subsequent to this surgery he developed hypothalamic dysfunction, diabetes insipidus, asthma and a seizure disorder. In addition, since infancy his weight has been a cause for medical concern, and the reports repeatedly refer to Mr. ██████████ as obese (Exhibits 1 - 8). However, at the time of the Fair Hearing he had lost considerable weight, apparently since he has been a resident at ██████████

On April 9, 11, 25, and May 10, 14, 2001, when the Appellant was 19 years old, he was evaluated by Eleanor Holly Yasaitis, Ed.M., M.S.W., a licensed Educational Psychologist at ██████████ (Exhibit 6). She administered the Wechsler Adult Intelligence Scale (WAIS-III) to assess Mr. ██████████'s overall cognitive abilities. As documented in the record, he received the following test scores:

Verbal IQ	87 (low average range)
Performance IQ	63 (extremely low average range)
Full Scale IQ	74 (borderline range)

An analysis of the pattern of his subtest scores indicates that Mr. [REDACTED]'s verbal skills are his strength, while he demonstrates significant deficits when performing visual perceptual, visual motor, and visual spatial tasks. The report states that people who have difficulty with these latter tasks often find it hard to organize their behavior when required to perform school related or daily living tasks.

Ms. Yasaitis also compared the current test results with those from 1997, when the Appellant was 17 years old, at which time he was tested with the WISC-III. At that time his verbal IQ was 83, and his performance IQ was 53. Because of the thirty point discrepancy between the verbal and performance scores, a full scale IQ was not reported. (This is apparently the standard practice in the field.) Nonetheless, it is clear that the test results from 1997 are consistent with his current test results. In her summary, Ms. Yasaitis described Mr. [REDACTED] as an obese, depressed young man with significant non-verbal learning disabilities, and a significant eating disorder which appears to be neurologically based.

Randine Parry, Ph.D., appeared as an expert witness for DMR. She testified that she had reviewed the report discussed above, and explained and confirmed the testor's findings. She also observed that his weaknesses are in the non-verbal areas, but that he showed substantial strengths in tests that measured his verbal skills. She further testified that a verbal IQ score in the eighties is not consistent with mental retardation.

Also entered into evidence by the Department were results of tests administered by the Franciscan Children's Hospital. Mr. [REDACTED] was eleven years old when he took these tests in 1994, and was at that time a student at [REDACTED] in [REDACTED] Massachusetts. The test used was the Stanford-Binet Intelligence Scale, 4<sup>th</sup> edition. Mr. [REDACTED] received the following scores:

Verbal Reasoning	81
Abstract/Visual Reasoning	57
Quantitative Reasoning	83
Short Term Memory	68

The report states that Mr. [REDACTED]'s true composite score falls in the range of 63 to 71, but cautions that because of "the extreme discrepancy between [the component scores], Mr. [REDACTED]'s test composite SAS should not be viewed as a unitary indication of cognitive functioning." The report also included his test scores from 1988, at which time he received a composite IQ of 75, and from 1991, when his Test Composite score was 84. Apparently the range of the component scores was not so wide as to preclude the averaging of his scores.



Applying those standards, I find that Mr. [REDACTED] does not have significantly sub-average intellectual function in that his all of his Verbal IQ scores have been above 80, as were two of his Composite IQ scores, in tests administered to him before he was 18 years old. In reaching my decision, I have relied on the testimony of DMR's expert, Randine Parry, who testified that IQ scores in the eighties are not consistent with mental retardation. No contrary evidence was presented by the appellant or his witness. 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.

DMR and the Appellant also presented evidence relative to the Appellant's adaptive functioning. Because the Appellant failed to show that he has significantly sub-average intellectual functioning, 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: \_\_\_\_\_

2/15/05

Deirdre Rosenberg  
Deirdre Rosenberg  
Hearing Officer