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Executive Office of Health & Human Services
Department of Mental Retardation
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March 7, 2008

[redacted]

Re: Appeal of [redacted] Final Decision

Dear Mr. & Mrs. [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
Terry O'Hare, Regional Director
Marianne Meacham, General Counsel
Patricia Oney, Assistant General Counsel
Richard Costigan, 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 or Department), (115CMR 6.30-6.34) and M.G.L. c. 30A. A Fair Hearing was held on October 5, 2007, at the Department of Mental Retardation's Worcester Area Office. Those present were:

[redacted]	Appellant
	Appellant's Mother
Katrin Weir	Eligibility Psychologist for DMR
Patricia Oney	Counsel for DMR

The evidence consists of the following exhibits, and approximately one and one-half hours of testimony:

1. Psychological Evaluation, 8/1/91
2. Psychological Evaluation, Franciscan Children's Hospital,, 3/9,11/92
3. Psychological Assessment, Tantasqua Regional Schools, 2/27/98
4. Psychological Assessment, Tantasqua Regional Junior High School, 10/25/99 and 3/20/99
5. Psychological Evaluation, Child and Family Services, 10/19/00
6. Psychological Evaluation Report, 3/10/03
7. Physical Therapy Evaluation, Tantasqua, 11/93
8. Physical Therapy Evaluation, Tantasqua,11/97
9. Occupational Therapy Summary, Tantasqua, 4/24/00
10. Occupational Therapy Evaluation, Southern Worcester County Educational Collaborative, 3/26/03
11. Occupational Therapy Discharge Summary, Southern Worcester County Educational Collaborative, 12/23/03
12. Eligibility Report, 9/29/86

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 a 21 year old man who lives with his adoptive parents in Fiskdale, Massachusetts. He was removed from his biological parents' care due to chronic neglect and possible abuse when he was approximately three years old; joined the Smith household as a foster child when he was seven years old; and was adopted by them when he was twelve. He has received special education services from an early age. Currently, he is attending a transitional program to prepare him for independent living. He has been diagnosed with cognitive and visual perceptual delays, and has some fine motor impairments.

SUMMARY OF THE EVIDENCE

The first cognitive evaluation in the record is dated August 1, 1991 (Exhibit #1). Adam was four years and ten months old at the time of this assessment, and had recently been removed from his biological parents and put into foster care. He received the following scores on the Wechsler Preschool and Primary Scale of Intelligence (WPPSI):

Verbal IQ	79
Performance IQ	77
Full Scale IQ	76

The clinician who performed the assessment, Barry E. Roy, Ed.D., stated that he believed that the Appellant's scores understated his intellectual abilities. Mr. Roy felt that [redacted] abilities were most likely within the low average to average range. He noted that [redacted] two highest scores in the verbal subtests were in Vocabulary and Similarities, which, he said, are closely related to intellectual potential (Exhibit #1, p. 2). It was Mr. Roy's opinion that the pattern of [redacted] scores was consistent with an "early environmental lack of stimulation" (Exhibit #1, p. 3).

The next psychometric evaluation was performed by Brian L. Meyer, Ph.D., in March, 1992, when the Appellant was five years, five months old (Exhibit #2). The Stanford-Binet intelligence scale was administered, among other tests. His scores are as follows:

Verbal Reasoning	80
Abstract/Visual Reasoning	70

Quantitative Reasoning	60
Short-Term Memory	79
Partial Composite Score	67

Although Dr. Meyer stated that [redacted]erall cognitive test scores put him in the mildly mentally retarded range, he stated that Adam did not merit such a diagnosis, for the following reasons:

> "His Partial Composite score is artificially suppressed by the Quantitative area score, which was itself determined by only one subtest. Seven of his subtest scores fell within the borderline to low average range, and another, his Vocabulary subtest score, fell within the average range; therefore, all but one of his abilities are above the mildly mentally retarded range. The Vocabulary subtest, on which Adam obtained his highest score, is the best indicator of cognitive potential, suggesting that [redacted]tential may be as high as in the average range." Exhibit #2, p. 5.

On February 27, 1998, Adam was evaluated by Paul Murphy of the Tantasqua Public School System (Exhibit #3). His IQ was measured on the Wechsler Intelligence Scale for Children, Third Edition (WISC-III), on which he achieved the following scores:

Verbal IQ	78
Performance IQ	59
Full Scale IQ	66

Mr. Murphy described these results as being consistent with assessments conducted in 1993 and 1994. Those assessments are not in the record. Compared to the earlier test scores that *are* in the record (Exhibits #1 and #2), the results set forth above are somewhat lower, although the same pattern of relatively strong verbal scores and relatively weak performance scores continues. Mr. Murphy noted that the Appellant has made a "remarkable adjustment" over time, and that he "puts a great deal of pride and value on his academic achievement" (Exhibit #3, p. 3).

The fourth cognitive evaluation in the record was performed in 1999 when Adam was 13 years old (Exhibit #4). He received the following scores on the WISC-III:

Verbal IQ	84
Performance IQ	65
Full Scale IQ	73

As can be seen, there was a twenty point discrepancy between his verbal and performance IQs, which means that his full scale IQ score should be interpreted with caution. The clinician who tested the Appellant described his cognitive capabilities as "ranging from average to barely functional" (Exhibit #4). There was considerable scatter among his subtests, from a score of 1 on block design to a 10 on picture completion. Unfortunately, only two pages of this clinician's 15 page report are readable, so we may not have the full advantage of his thoughts regarding the Appellant. However, the two pages that did print out properly appear to contain the crucial information, that is, the WISC-III IQ results and subtests, and the clinician's summary. Therefore, I felt it was appropriate to use this evaluation in reaching my decision.

The final cognitive evaluation of the Appellant in the record was conducted on March 10, 2003, when he was 16 years 5 months old (Exhibit #6). He received the following results on the WISC-III:

Verbal IQ	74
Performance IQ	57
Full Scale IQ	63

According to the clinician who evaluated [redacted] the scores he received "indicate that his present overall level of cognitive functioning is in the Intellectually Deficient range." Again, there was a significant 17 point difference between Adam's scores on the verbal and performance scales (p. 2).

Also in the record were two physical therapy evaluations (Exhibits #7 and #8) and three occupational therapy reports (Exhibits #9, #10, and #11). Of particular relevance is the Occupational Therapy Evaluation of Laurie Fazio, a Registered Occupational Therapist affiliated with the Southern Worcester County Educational Collaborative (Exhibit #10). This evaluation was conducted on March 3, 2003, when [redacted] was 16 years, 6 months old. Ms. Fazio's report discusses in some detail the Appellant's deficits in fine motor visual and perceptual skills. Specifically, she noted that his "perceptual and visual difficulties affect his speed and accuracy with written work as well as attention to details" (Exhibit #10, p. 3). In addition, his fine motor skills are compromised by hand tremors. Therefore, he requires extra time with fine motor manipulative and writing tasks.

Katrin Weir, who is the eligibility psychologist for the Department, found that the Appellant was ineligible for DMR supports because his "intellectual abilities as assessed are above regulatory ranges" (Exhibit #12). At the Fair Hearing, she testified that it was her opinion that the Appellant's difficulties with fine motor manipulative tasks, as well as his visual and perceptual deficits (as discussed above), were what caused his low scores on the performance scales of the intelligence tests, rather than deficient intellectual abilities. In Exhibit #6, for example, [redacted] erformance on the Perceptual

Organization Index, which relies on mechanical skills, manual dexterity, speed and accuracy, was in the intellectually deficient range (Exhibit #6, p. 3), pulling his full-scale IQ score down. He also did poorly on the Visual-Motor Integration (VMI), which is another test that measures visual-motor coordination.

Ms. Weir further testified that when there is a dramatic split between verbal IQ scores and performance IQ scores, as there is in [redacted] test results, it is appropriate to rely on the individual's verbal IQ scores (rather than his full scale IQ scores) to obtain an accurate assessment of his intellectual abilities. She concluded that [redacted] verbal IQ scores of 78, 84, and 74 (Exhibits #3, #4, and #6) were not consistent with a diagnosis of mental retardation as it was defined when [redacted] applied for DMR supports.[1] She apparently did not use the test results reported in Exhibits #1 and #2 in reaching her ineligibility determination, which was appropriate, given his very young age at the time those tests were administered. Although I believe it is a close call, I defer to Ms. Weir's expertise in concluding that [redacted] does not meet the IQ standard in effect at the time ("approximately 70 to 75 or below"). Because he does not meet that standard, it is unnecessary to discuss his adaptive skills, since that prong of DMR's eligibility test only comes into play if an applicant's IQ meets its definition of mental retardation

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 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 two or more of the following seven adaptive skill areas: communication, self-care, home living, community use, health and safety, functional academics, and work.

Consistent with its statutory mandate, at the time [redacted] applied for DMR supports, the Department had 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

[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. Prior to that date, the Department had defined mental retardation as "inadequately developed or impaired intelligence" as evidenced (in part) by an "IQ score of approximately 70 or 75 or below."

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.

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: 2/19/08

Deirdre Rosenberg
Hearing Officer