

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

Mitt Romney Governor

Kerry Healey Lieutenant Governor Boston, MA 02118

Timothy Murphy Secretary

Gerald J. Morrissey, Jr.

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

March 29, 2006



Re:

Appeal of

Final Decision

Dear Mrs.

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, J.

Commissioner

GJM/ecw

cc: Deirdre Rosenberg, Hearing Officer

Marianne Meacham, General Counsel

Gail Gillespie, Regional Director

Randine Parry, Psychologist

Roberta Lewonis, Regional Eligibility Manager

John Mitchell: Assistant General Counsel

Victor Hernandez, Field Operations Senior Project Manager

/File

COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of

| beid Dubbeberau | ecision is issued pursuant to the regulations of the Department of Mental DMR or Department), (1150MR 6.30-6.34) and M.G.L. c. 30A. |
|--------------------|--|
| The A | applied for services from DMR in May, 2005. the Department officially denied his application on the grounds that he did efficially denied his application of the grounds that he did efficition of mental retardation, as set forth at 115 CMR 2.01. He appealed and a fair hearing was held on January 20; 2006. Those present were: |
| | Appellant's mother Appellant's father Counsel for DMR Clinical Psychologist for DMR |
| The evidenc | e consists of the following exhibits; and approximately 45 minutes of |
| 1. | School Letter dated August 22, 2005 |
| 2. | Franciscan Hospital for Children, Report, dated August 26, 2005 |
| 3. | Application for DMR Eligibility |
| .4. | Curriculum Vitae of Randine Parry, Ph.D. |
| 5, | Eligibility Report |
| 6. | Franciscan Children's Hospital, Psychological Evaluation, dated 10/28 and 10/29/91 |
| 7. | Public Schools, IEP Re-evaluation, dated 12/12/97 |
| 8. | Franciscan Hospital for Children, Psychological Evaluation, dated 7/13/05 |
| | Franciscan Hospital for Children, Psychological Evaluation, dated 10/5/94 |
| 9. 10 | Franciscan Hospital for Children, Clinical Resume, dated 11/6/91 |
| | Public Schools, IEP Re-evaluation, dated 2/4/04 |

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 man who has been enrolled as a day student at the School located in Massachuseuts, since July 1995, and in its Transition Program since July 2003. He lives with his parents in Massachuseuts. He has been diagnosed with Autasms Pervasive Developmental Disorder, Motor Dyspraxia, Oral Motor Apraxia, ADHD, and Oppositional Defiant Disorder, among others:

SUMMARY OF THE EVIDENCE

first psychological evaluation was conducted in 1991 at the Franciscan Children's Hospital, in Boston, Massachusetts, when he was four years old. (Exhibit #6) His performance on the Wechsler Preschool and Primary Scale of Intelligence--Revised (WPPSI-R) placed him in the high average range of intelligence in verbal skills, with a Verbal 10 of 115, and in the low average range of intelligence in nonverbal skills, with a Performance 10 of 82. Because of the wide discrepancy between his verbal and nonverbal skills, a Full Scale 10 was not computed.

The Appellant was next evaluated on 10/05/94 when he was seven years old at the School! (Exhibit #9) Arthistime his cognitive performance was measured on The Wechsler Intelligence Scale for Children-Third Addition (WISC-III). He received the following scores:

Verbal IQ

105 (average)

Performance IQ

79 (low average)

Again, because of the large discrepancy between was not computed.

s two IQ scores, a Full Scale IQ

In 1997, when he was ten years old, the Appellant was tested by the Public Schools for his IEP Re-evaluation. (Exhibit #7) He received the following scores on the WISC-III scale:

Verbal IQ

98 (average)

Performance IQ

78 (low average)

The clinician who evaluated stated that "his practical knowledge and social judgment was just below [the average range for his age;" while "all other areas were within [the] average range." (Exhibit #7)

When was 16 and one half, he again underwent testing by the Public Schools in connection with another three year re-evaluation. (Exhibit #11) His scores at this time were:

Verbal IQ 88

Performance IQ 71

Full Scale IQ 77

The report states that these scores "cannot be considered as valid measures of his verbal and nonverbal skills," and it is clear that the writer considers the scores to be an understatement of Steven's cognitive abilities. (Exhibit #11) The fact that the Appellant's scores, especially his verbal IQ, have trended down from his first evaluation in 1991 to the present one, is not mentioned by any of the testors.

The final evaluation in evidence is a 2005 psychological evaluation conducted by the Franciscan Hospital for Children. (Exhibit #8) Mr. Was almost 18 years old at this time. The intelligence test administered in this evaluation was the Stanford-Binet Intelligence Scales—Fifth Edition (SB-V): All of his scores clustered in the average range (90-109 on the Stanford-Binet), and were higher than his recent test results, when in fact, according to the report, it would be expected that the scores would fall because of the Flynn Effect. Also, the wide discrepancy between a verbal and non-verbal test results, which was typical of his past performances, is absent here.

Verbal IQ 96

Nonverbal IQ 90

Full Scale IQ 92

The writer of the report conjectured that the "improvement from previous scores further implies that his medicinal regime and structured teaching are bringing out his natural ability." (Exhibit #8)

Both of the Appellant's parents testified that they understand that their son does not meet the Department's IQ criteria for establishing that an applicant is retarded ("approximately 70 to 75 or below"), but, as his father stated, the DMR standards do not change the state of the control of

the Appellant's mother, testified that her son requires help with everything related to daily living skills, and is incapable of being responsible for himself: For example, she stated that he can't go to the bathroom on his own. She also testified has always been and continues to be obsessed with baby dolls and girl toys. that has always been and continues to be obsessed with baby dolls and girl toys. that he Appellant's work prospects. Paul Carter, Director of Vocational Services at the School, wrote that "given the progress observed over the past two years in the School, wrote that "given the progress observed over the past two years in the Transition Program, it does not appear that he will reach the level of independence needed for unsupervised employment" in the four years that he is eligible to remain in the transition program. (Exhibit #1)

Although I cannot consider the evidence related to his adaptive functioning in making my decision, since since solve a more complete picture of his situation.

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) he must be domiciled in the Commonwealth,
- d) he must be a person with Mental Retardation as defined in 115 CMR 2.01, and
- e) 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:

The record before me contains the results of five intelligence tests spanning fourteen years. Except for one Performance IQ test that took when he was 16 and one half years old, he has consistently received IQ scores in the low average to high average range. No contrary evidence was presented by the Appellant. 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. Because the Appellant failed to show that he has significantly sub-average intellectual function, it was not necessary for me to consider his adaptive functioning.

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)].

Deirdre Rosenberg Hearing Officer