

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  
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May 23, 2006

Re: Appeal of [REDACTED]  
Final Decision

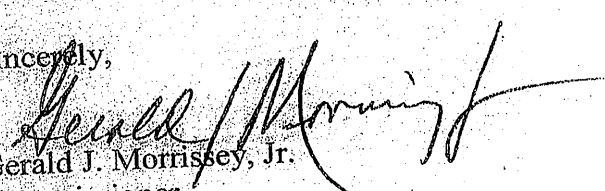
Dear Mr. & Mrs. [REDACTED]

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 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

GJM/ecw

cc: Deirdre Rosenberg, Hearing Officer  
Marianne Meacham, General Counsel  
Amanda Chalmers, Regional Director  
Patricia Shook, Psychologist  
Veronica Wolfe, 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 [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.

The Appellant, [REDACTED], was denied DMR supports by the Department on December 3, 2003, on the grounds that he did not meet its definition of mental retardation, as set forth at 115 CMR 2.01. He appealed that decision, and a fair hearing was initially held on October 14, 2005, but was suspended after approximately forty-five minutes so that the Appellant's parents could retain legal counsel. The hearing continued on February 3, 2006. Both hearings were held at the Department of Mental Retardation's Hogan Regional Center at 450 Maple Avenue, Hathorne, MA. Those present were:

[REDACTED]  
Elaine W. Cockcroft

Barbara Fortier

Kim LaDue  
Patricia Shook  
Sandra Brennan

Veronica Wolfe

Appellant  
Appellant's mother  
Appellant's father  
Counsel for Appellant  
(second hearing only)  
LICSW on behalf of Appellant  
(first hearing only)  
Counsel for DMR  
Eligibility Psychologist for DMR  
Eligibility Coordinator (observer)  
(first hearing only)  
Regional Eligibility Manager  
(first hearing only)

The evidence consists of the following exhibits submitted by DMR, and approximately two hours of testimony:

1. DMR Eligibility Report, dated December 19, 2006
2. Psychological Test Report, [REDACTED] Public Schools, dated June 2000
3. Denial of Eligibility Letter, dated December 3, 2003
4. Individualized Education Program (IEP), dated March 28, 2003
5. Educational Evaluation, dated March 20, 2003

## BACKGROUND

The Appellant is a 21 year old man who is currently a residential student at the [REDACTED] in [REDACTED] Massachusetts. Immediately prior to attending the [REDACTED] the Appellant attended the [REDACTED] in [REDACTED] Massachusetts, for two years, and before that was enrolled in the [REDACTED] [REDACTED] since he entered kindergarten. He lives with his parents in [REDACTED] Massachusetts. His primary diagnosis is Autism Disorder.

## SUMMARY OF THE EVIDENCE

The earliest cognitive assessment of [REDACTED] in the record is from 1992, when [REDACTED] was seven years old. Although the original report of this evaluation was not included in the materials provided me, the results are discussed in Exhibit #2, Psychological Test Report of the [REDACTED] Public Schools, which was prepared in June, 2000. His scores from the 1992 tests (WISC-R) are as follows:

Verbal IQ                      90

Performance IQ            64

Exhibit #2 also includes test results from 1997, when [REDACTED] was eleven years, eight months old. The test administered was the WISC-III, and he achieved the following scores:

Verbal IQ                      100

Performance IQ            75

In neither the 1992 nor the 1997 evaluation were full-scale IQ scores computed, presumably because of the wide discrepancy between the Verbal and the Performance scores. Exhibit #2 does not mention by whom, or under what circumstances, the 1992 and 1997 tests were administered.

The testing (WISC-III) actually conducted as part of the Psychological Test Report of the [REDACTED] Public Schools in 2000 is consistent with the two earlier evaluations. [REDACTED] was 15 years old at the time of the June, 2000 evaluation:

Verbal IQ                      94

Performance IQ            65

This report states that "the 29-point difference between [REDACTED]'s Verbal and

Performance scores was large enough to be considered clinically significant." Therefore, subtest results were examined, and, according to the testor, the Appellant's Verbal Comprehension subtest scores clustered in the average to above average range. (Exhibit #2)

The Appellant's final cognitive assessment was conducted on September 23, 2003, by the [REDACTED] Public Schools (Exhibit #6). [REDACTED] was 18 years, 3 months old at the time. Because mental retardation must be established before an applicant who is seeking adult services reaches the age of eighteen, I have not considered these test results in making my decision.

DMR's expert witness, Dr. Patricia Shook, testified that when there is a wide discrepancy between a person's verbal IQ score and performance IQ score, as is the case here, it indicates that the individual being tested has a learning disability in certain areas, rather than being mentally retarded. She stated that individuals with mental retardation usually display a flatter test score profile.

As can be seen, [REDACTED] has three Verbal IQ scores from 1992, 1997, and 2000 were all in the low average to average intelligence range. In addition, his Verbal Comprehension subtest scores clustered in the average to above average range in the 2000 assessment. Based upon these scores, and on Dr. Shook's testimony that it was her opinion that [REDACTED]'s test profiles suggest that he has a learning disability rather than mental retardation, I have concluded that the Appellant does not meet the Department's criteria for mental retardation.

[REDACTED]'s parents argue that their son's test results do not give a full picture of him. They are particularly concerned about his behavior as it relates to safety issues. According to Mrs. [REDACTED]:

[REDACTED] is fascinated with steam, smoke, and fire. He has set small fires in our kitchen to see the smoke. When we are away from home and he is with a baby sitter, we must remove the fuse to the stove to avoid potential danger. [REDACTED] wanders, is impulsive, talks indiscriminately to strangers, and has extremely poor decision-making skills. Exhibit #21.

In addition, his mother testified that the Appellant cannot perform in the workplace without constant supervision.

Barbara Fortier, LICSW for the [REDACTED] Public Schools, also testified that testing does not capture [REDACTED]'s level of functioning, mentioning specifically his need for constant supervision, and his obsession with steam and vents. These concerns were voiced in many of the reports in the record. (See, for example, Exhibits #11, 15 and 19)

Although I cannot consider this evidence in making my decision, since [REDACTED]'s IQ scores disqualify him from DMR supports and services, I have included it to give a more complete picture of his situation.

## FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, and despite the Appellant's obvious need for continuing support, I find that he 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.

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.

As mentioned before, [REDACTED]'s Verbal IQ scores from 1992, 1997, and 2000

were all in the low average to average intelligence range. Also, his Verbal Comprehension subtest scores from the 2000 evaluation were in the average to above average range. Based upon these test results, and the testimony of Dr. Patricia Shook, the Department's expert psychologist, that the Appellant's test profiles suggest that he has a learning disability rather than mental retardation, 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)].

Date:

3/17/06

Deirdre Rosenberg  
Deirdre Rosenberg  
Hearing Officer