

The Commonwealth of Massachusetts
Executive Office of Health & Human Services
Department of Mental Retardation
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March 14, 2008

Ms. Celia [REDACTED]
Mr. Donald [REDACTED]
2 Jefferson Street
Lawrence, MA 01843

Re: Appeal of [REDACTED] Jr. - Final Decision -

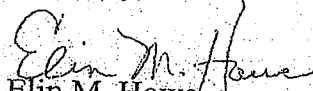
Dear Mr./Mrs. [REDACTED]

Enclosed please find the recommended decision of the hearing officer in the above appeal. A fair hearing was held on the appeal of your son's eligibility determination.

The hearing officer 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. 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
Jeanne Adamo, Hearing Officer (Observing)
Amanda Chalmers, Regional Director
Marianne Meacham, General Counsel
Elise Kopley, Assistant General Counsel
Patricia Shook, 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 December 7, 2007, at the Department of Mental Retardation's Hogan Regional Center in Hathorne, Massachusetts. Those present were:

[REDACTED]
Patricia Shook, Ph.D.
Elise Kopley
Jeanne Adams

Appellant
Appellant's Mother
Appellant's Father
Eligibility Psychologist for DMR
Counsel for DMR
Hearing Officer, observing

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

1. Letter of Daniel R. Morocco, Ed.D., 5/15/2007
2. Curriculum Vitae of Patricia H. Shook, Ph.D.
3. Eligibility Letter, 4/19/07
4. Eligibility Determination, 4/13/07
5. Request for Fair Hearing, 5/29/07
6. Notice of Appeal, 4/30/07
7. Psychological Examination, 3/26/69
8. Cognitive Evaluation of John T. Bouros, Ph.D., 7/13/06
9. Psychological Report, 3/15/07
10. Excerpt from DSM-IV-Text Revision
11. Adaptive Behavior Assessment System, Second Edition (ABAS-II)

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 43 year old man who lives with his parents in Lawrence, Massachusetts. He was born with a cleft palate which was surgically repaired when he was eighteen months old. During the developmental period he received special education services and reportedly graduated from high school. At the time of the Fair Hearing, Mr. Monty had been unemployed since March, 2005, when the company he worked for either moved out of state or went out of business. Prior to that, he had worked at a factory for seventeen years.

SUMMARY OF THE EVIDENCE

The first intellectual evaluation of the Appellant in the record is dated March 26, 1969 (Exhibit #7). Mr. [REDACTED] was four years and five months old at the time of this assessment. He received an IQ score of 58 on the Stanford-Binet Intelligence Test. The clinician who conducted the evaluation reported that it was difficult to test the Appellant because of his short attention span and very limited vocabulary. In reaching my decision, I did not give much weight to this assessment.

The second cognitive evaluation in the record was dated July 13, 2006, and was conducted by John T. Bourpos, Ph.D., at the request of the Massachusetts Rehabilitation Commission (Exhibit #8). Dr. Bourpos administered the Wechsler Adult Intelligence Scale, Third Edition (WAIS-III), among other tests, with the following results:

Verbal IQ	75
Performance IQ	79
Full Scale IQ	75

Dr. Bourpos reported that Mr. [REDACTED] Verbal Comprehension Index (VCI) score was 82. The VCI is similar to the Verbal IQ scale, but is considered a more straightforward measure of verbal comprehension. Similarly, the Perceptual Organization Index (POI) is considered a more straightforward measure of nonverbal reasoning abilities than the Performance score, as it does not include speed of information processing. Mr. [REDACTED] POI was 86. Dr. Bourpos described these two scores as being comparable to his verbal and performance IQ scores (but obviously they are a little higher) (Exhibit #8, p. 5).

According to Dr. this clinician, "the client was behaviorally appropriate, friendly and cooperative...Overall, persistence and patience were very good." Therefore, he

considered the results to be a reliable estimate of his current cognitive functioning (Exhibit #8, p. 4).

The Appellant's last cognitive evaluation occurred on March 15, 2007 (Exhibit #9), and was conducted by Daniel R. Morocco, Ed.D. His intellectual abilities were measured on the WAIS-III, with the following results:

Verbal IQ	70
Performance IQ	83
Full Scale IQ	74

As can be seen, Mr. [redacted] full scale IQ score was almost identical to that achieved on the prior evaluation (74 versus 75), although a statistically significant discrepancy between the verbal scale and the performance scale, which was not present in 2006, appears in the 2007 test results. Mr. Morocco did not comment upon this change. Quite possibly he did not have the previous test results. He stated that the Appellant was "cooperative, compliant, well motivated, and appeared to be working to the best of his ability" (Exhibit #9, p. 1). Therefore, he considered the results to be a "reasonable" reflection of his current functioning. Mr. Morocco diagnosed the Appellant as being mildly retarded.

Dr. Patricia Shook, who is an Eligibility Psychologist for the Department, testified that she had determined that Mr. [redacted] was ineligible for DMR services because his full scale IQ scores place him outside the "sub average intellectual" range as defined by the Department. In reaching her decision, she relied on Mr. [redacted] test scores from 2006 and 2007 (Exhibits #8 and #9). I agree that his earliest IQ result (Exhibit #7) was unreliable because of his young age (four) at the time he was tested, and because the clinician who evaluated him stated that he was very difficult to test. His full scale IQ was 75 when he was tested in 2006, and 74 when he was tested in 2007. Under DMR's regulation, an individual must have an IQ score of 70 or below to be eligible for its services as an adult. Therefore, Dr. Shook concluded that Mr. [redacted] was not eligible.

The record also contained evidence of the Appellant's adaptive skills. Because his IQ scores disqualify him for DMR supports, it is unnecessary for me to discuss this evidence.

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 Department of Mental Retardation's eligibility criteria for adult services.

In order to be eligible for DMR supports, an individual who is 18 years of age or older must meet the Department's definition of mentally retarded as set forth at 115 CMR 2.01:

Mental Retardation means significantly sub-average intellectual functioning existing concurrently and related to significant limitations in adaptive functioning.

Significantly Sub-average Intellectual Functioning means an intelligence test score that is indicated by a score of 70 or below as determined from the findings of assessments using valid and comprehensive, individual measures of intelligence that are administered in standardized formats and interpreted by qualified practitioners.

For the reasons stated previously, I find that the Department's decision that the Appellant is ineligible for services should be upheld.

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:

3/8/08


Deirdre Rosenberg
Hearing Officer