



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

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Governor

Kerry Healey  
Lieutenant Governor

Ronald Preston  
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Gerald J. Morrissey, Jr.  
Commissioner

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April 14, 2005

[REDACTED]

Re: Appeal of [REDACTED]  
Final Decision

Dear 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 son'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: Deidre Rosenberg, Hearing Officer  
Amanda Chalmers, Regional Director  
Marianne Meacham, General Counsel  
Marcia Hudgins, 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) (115CMR 6.30 - 6.34) and M.G.L. c. 30A. A fair hearing was held on February 7, 2005 at the Department of Mental Retardation's Central Office at 500 Harrison Avenue, Boston, Massachusetts.

[REDACTED]  
Veronica Woolfe  
Diane Johnson  
James Bergeron

Appellant  
Appellant's mother  
Appellant's father  
DMR Regional Eligibility Manager  
DMR Assistant General Counsel  
DMR Assistant General Counsel

The evidence consists of documents submitted by the Appellant and approximately one and one half 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 25-year-old man diagnosed with Asperger's Syndrome who currently lives with his parents in [REDACTED] Massachusetts. He has received educational services pursuant to Chapter 766, the Massachusetts Students with Disabilities Act, through the [REDACTED] School system, and graduated from [REDACTED] High School in 2002. Since 1997, he has been a client of the Massachusetts Rehabilitation Commission.

By letter dated August 26, 2002, the Appellant's application for DMR supports was denied on the ground that he did not meet the Department's definition of mental retardation, as set forth at 115 CMR 2.01. Subsequently, in September, the DMR Regional Director held an informal conference with Mr. [REDACTED]. The Department upheld its original decision and so informed Appellant. Today's fair hearing on this decision is held pursuant to Mr. [REDACTED]'s request for same.

## SUMMARY OF THE EVIDENCE

Veronica Woolfe, Regional Eligibility Manager for DMR for Region 3, testified regarding Mr. [REDACTED]'s test results. Exhibit A is the [REDACTED] School District Specialist Summary Report. The Appellant was 20 years old at the time of this report. The test used to determine intellectual function was the Woodcock-Johnson, which is a multiple-skill battery test designed to assess academic achievement. Ms. Woolfe testified that Mr. [REDACTED]'s performance on the test fell solidly in the average IQ range. Specifically, his scores were as follows:

### READING

Broad reading	96
Basic reading skills	105
Reading comprehension	89

### MATHEMATICS

Broad mathematics	99
Basic math skills	97
Mathematics reasoning	106

### WRITTEN LANGUAGE

Broad written language	86
Basic writing skills	93
Written expression	81

### BROAD KNOWLEDGE

Science	110
Social studies	87
Humanities	81

The persons administering these tests recommended that Mr. [REDACTED] contact Massachusetts Rehabilitation Commission for assistance with locating and securing appropriate employment.

Ms. Woolfe next testified regarding Mr. [REDACTED]'s Individual Education Plan of January 26, 2002 (Exhibit C). The Appellant was 21 years and 7 months at the time the



test was administered. She noted that the report states that Mr. [REDACTED] is of average intelligence, and that he attained the necessary high school credits to be awarded a high school diploma from [REDACTED] High School. Nevertheless, the report diagnoses him as having a pervasive developmental disorder. The IEP team recommended that Mr. [REDACTED] be referred to the Massachusetts Rehabilitation Commission for further services related to employment.

Ms. Woolfe also testified regarding Exhibit D, an Individualized Trait Analysis of Mr. [REDACTED] dated January 26, 2002. Ms. Woolfe stated that this test is used to predict vocational performance, and includes intelligence testing, using the Wechsler Test. Mr. [REDACTED] achieved the following scores:

Full scale IQ	90
Verbal IQ	92
Performance IQ	90

All of these scores indicate an IQ in the normal range.

The report also stated that the Appellant had severe problems interacting and working with others, and suffered from anxiety, impulsivity and depression. However, by statute these observations are not relevant to my review of the Department's determination that Mr. [REDACTED] is not eligible for DMR services.

Finally, Ms. Woolfe testified regarding Exhibit E, a Perceptual Memory Task Interpretive Analysis. She stated that perceptual memory is an aspect of intelligence, and therefore relevant to DMR's eligibility determination. All of Mr. [REDACTED]'s scores were above average on this test, the majority being above 115. On the Spatial Concept Memory component the Appellant received a score of 130. Ms. Woolfe testified that it was her opinion that a person who was mentally retarded would score around 70.

Exhibit F is a Vocational Assessment administered by the Merrimack Education Center. The report notes that Mr. [REDACTED] has poor socialization skills, is easily distracted from tasks or by changes in task or schedule, and that he suffers from depression and anxiety. The Center recommended that he contact the Massachusetts Rehabilitation Commission and the Department of Mental Health "in order to assist him with obtaining and maintaining employment."

Exhibit G is the Department of Mental Retardation's Adult Eligibility Application Form. In the comments section prepared by Kathryn Q. LaPlante, the staff person who conducted the interview with the Appellant, she observed that Mr. [REDACTED] "will bang his head against the wall until it is bloodied and that he...has several areas on his head that

are scarred and misshapen," and that his self-injurious behaviors have led to his being hospitalized in a psychiatric facility. The Appellant's behaviors are also referenced in Exhibit H, the Department of Mental Retardation's Assessments of Dimensions.

Although none of the information contained in Exhibits F, G, and H, bears on whether Mr. [REDACTED] is retarded as that term is defined by DMR, I have included it to give a more complete picture of his situation and the nature of his problems. Ms. Woolfe did not testify regarding the matters discussed in the above two paragraphs.

The Appellant's mother and father, who testified on their son's behalf at the hearing, do not dispute the test results indicating that their son has an IQ in the normal range. However, they argue that his social problems negate his intellectual abilities.

Mrs. [REDACTED] stated that upon her son's graduation from [REDACTED] High School, he was referred by the school's special education personnel to [REDACTED] College. But, she testified, the College did not provide any social or emotional supports, without which he has great difficulty functioning. As a result, the [REDACTED] concluded (on the high school's recommendation) that the high school take back the Appellant's diploma so that he could continue his education there until he reached the age of 22 (which he is legally entitled to do). Ultimately, [REDACTED] provided him with a janitorial position at the school. When Mr. [REDACTED] turned 22 his job ended.

Both parents testified that their son had been a Massachusetts Rehabilitation client for 7 years. Mrs. [REDACTED] testified that his social interaction with other Mass Rehab clients had been a disaster. Mass Rehab recommended that Mr. [REDACTED] seek services from the Department of Mental Retardation because it felt his problems were so severe that it would not be able to secure him employment.

Mr. [REDACTED] stated that his son "has no life, no goal, no job," and that the self-injurious behaviors described in various reports are worsening. He also expressed disappointment that in seven years the Massachusetts Rehabilitation Commission had not found his son a job.

#### FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, and despite Mr. [REDACTED] obvious need for continuing support, 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,
- 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.

Applying those standards, I find that Mr. [REDACTED] does not have significantly sub-average intellectual function in that he scored in the average range of intelligence in all of the tests entered into evidence (Exhibits A, C, D and E), and there were at least two instances where he achieved above average IQ scores (Exhibits A and E). No contrary

evidence was presented by the appellant or his witnesses. 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.

The Appellants witnesses also presented evidence and testimony relative to his impaired adaptive functioning. Because the Appellant failed to show that he has significantly sub-average intellectual functioning, which is a statutorily mandated first step, 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: 4/1/05

Deirdre Rosenberg  
Deirdre Rosenberg  
Hearing Officer