

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 found to be ineligible for DMR Adult Services on September 29, 2004, based on insufficient information. Subsequently, an informal conference was held on February 9, 2005, where her ineligibility finding was upheld. She appealed that decision, and a fair hearing was held on May 22, 2006, at the Department of Mental Retardation's Brockton Area Office. Those present were:

[REDACTED]
Appellant
Appellant's Authorized Representative
Eligibility Psychologist for DMR
Counsel for DMR

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

1. Curriculum Vitae of Dr.
2. Eligibility Report, dated 9/29/04
3. Informal Conference Report, dated 2/9/05
4. Boston Neuropsychology Services Evaluation, dated 8/28/98
5. Decision of Social Security Administration, Office of Hearings and Appeals
6. North River Counseling, Inc., Psychological Evaluation, dated 11/9/01
7. Home and Community Based Waiver Program Assessment, dated 4/7/04
8. Letter of [REDACTED] dated 7/16/01
9. Letter of [REDACTED], dated 8/24/00
10. [REDACTED] High School Diploma

As can be seen, these scores were almost identical to those she received in 1998, and put her in the mild range of retardation. Dr. [REDACTED], Ed.D., DABPS, who conducted the evaluation, stated that the results of the Rorschach "indicate that [REDACTED] is depressed, anxious and experiencing far more stress in her life than she can effectively cope with." (Exhibit #6).

In reaching his determination that Ms. [REDACTED] is not eligible for DMR services, Dr. [REDACTED], the Department's eligibility psychologist, testified that he could not use the results of the 1998 and 2001 evaluations in reaching his decision, because DMR's regulations require that mental retardation be established before an applicant for adult services has reached the age of 18 (115 CMR 2.01), and both evaluations took place when the Appellant was over 18 years of age. Apparently there are no IQ test scores available from the qualification period, that is, prior to the age of 18. Thus, Dr. [REDACTED] based his conclusion that Ms. [REDACTED] was ineligible for DMR services, in the first instance, on "insufficient information." (Exhibit #2). He did not conduct his own assessment of the Appellant.

Dr. [REDACTED] also testified that he had concluded that the Appellant's adaptive skills were not sufficiently impaired to meet the Department's criteria for mental retardation. In addition to having an IQ of "approximately 70 to 75 or below," she 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. In arriving at his decision, Dr. [REDACTED] stated that he had reviewed the Inventory for Client and Agency Planning (ICAP) (Exhibit #11), which is an assessment of Ms. [REDACTED]'s functional abilities. According to Dr. [REDACTED], her scores were generally very good, and did not suggest the level of impairment required by DMR to establish mental retardation.

[REDACTED], LICSW, who has been the Appellant's therapist since 1998, testified that she had reviewed the same ICAP and felt that it overstated her client's abilities. While it appears that there is some overstatement of Ms. [REDACTED]'s functional levels, it is nevertheless also evident from Ms. [REDACTED]'s testimony, the testimony of the Appellant herself, and the written record, that her limitations in daily living activities are not profound. Clearly she needs help with money management and balancing the demands of child care and employment, but she otherwise appeared to function quite well.

Thus, I agree with the Department that Ms. [REDACTED] is not eligible for DMR services.

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) she must be domiciled in the Commonwealth,
- b) she must be a person with Mental Retardation as defined in 115 CMR 2.01, and
- c) she 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 she meets that criterion. However, I find that she 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.

Unfortunately, there were no IQ tests in the record which were administered to the Appellant before she was 18 years old. Even if there had been, the evidence demonstrated that she did not have related limitations in two or more of the listed adaptive skill areas to the degree necessary to meet DMR's standards. Therefore, she is ineligible for DMR supports.

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:

June 13, 2006

Deirdre Rosenberg
Deirdre Rosenberg
Hearing Officer