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

Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

JudyAnn Bigby, M.D.
Secretary

Elin M. Howe
Commissioner

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

September 7, 2007

[redacted]

Re: Appeal of [redacted] - Final Decision

Dear [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,

Elin M. Howe
Commissioner

EMH/ecw
cc: Deirdre Rosenberg, Hearing Officer
Richard O'Meara, Regional Director
Marianne Meacham, General Counsel
Elizabeth Moran Liuzzo, Regional Eligibility Manager
Patricia Oney, Assistant General Counsel
Frederick Johnson, Psychologist
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 April 23, 2007 at the Department of Mental Retardation's Wrentham Developmental Center in Wrentham, Massachusetts. Those present were:

[redacted]	Appellant
[redacted]	Appellant's Father
Catherine Thomas	Program Director, Cape and Island Emergency Services, DMH
Dr. Philip Dingmann	Appellant's Expert
Patricia Oney, Esq.	Counsel for DMR
Frederick V. Johnson, Psy.D.	Eligibility Psychologist for DMR

The evidence consists of the following exhibits and one and one-half hours of oral testimony.

1. DMR Eligibility Letter, 8/29/06
2. DMR Eligibility Report, 8/17/06
3. DMH Intake Report, 6/23/06
4. Psychological Evaluation Report, 3/22/06 and 4/05/06
5. Adaptive Behavior Assessment System, 6/23/06
6. Kohlman Evaluation of Living Skills, 9/12/06
7. Guardianship Decree, 5/12/98

ISSUE

Whether the Appellant meets the eligibility criteria for DMR services by reason of mental retardation as defined in 115 CMR 6.03(1).

BACKGROUND

The Appellant, [redacted] is a twenty-nine year old male who lives in Cape Cod, Massachusetts. He was born with a non-specific neuromuscular condition which results in a left-sided weakness affecting his posture and stance; a somewhat dysmorphic facial appearance; and slurred, and at times indistinct, speech. His sister [redacted] suffered from the same condition. According to the testimony of his father, [redacted] several years ago his daughter had been found eligible for DMR services and placed in a group home in Carver, Massachusetts. He also testified that because of the guilt he felt about his daughter not living with him, he was determined to keep his son at home. As a result, the Appellant attended local public schools, receiving special education services under Chapter 766. After [redacted] graduated from high school at age eighteen, he attended a one-year program at a community college on Cape Cod designed for special needs students. His tuition was paid for by the Massachusetts Rehabilitation Commission. It was during this time that Mr. [redacted] realized that [redacted] lacked sufficient daily living skills to be able to function outside of a structured setting. Eventually, [redacted] completed the college program, although it took him three years to do so.

There have been numerous attempts during the last several years by Mr. [redacted] and others to find an appropriate living situation for the Appellant. Initially he shared an apartment with a special needs friend from high school, but was evicted after approximately one year. [redacted] then moved into an apartment run by the Department of Mental Health. He did not fare well in this setting either, which his father attributes to the fact that residents were not provided with any daily living supports. Mr. [redacted] next found a placement for [redacted] in a group home for people in recovery managed by a rehabilitation facility located in Bourne, Massachusetts. (At some point, the Appellant had become alcohol dependent.) He was hopeful that this facility would work out for his son because there was a case worker on the premises who would presumably provide oversight and supervision for [redacted]. Unfortunately, the Appellant refused to accept this arrangement, and he ended up in a homeless shelter in Hyannis, Massachusetts. After a few months he was asked to leave the shelter. Subsequently, [redacted] moved into his father's home where he resided for two years. Because of [redacted] behavioral issues and volatile relationship with his father, Mr. [redacted] had his son evicted in 2005.

At this point, Catherine Thomas, who is the Department of Mental Health's Program Director for the Cape and Island's Emergency Services, and who testified at the hearing, became involved with the [redacted]. She found a placement for [redacted] which provided appropriate structure at a shelter called Champ House. [redacted] chose not to move into this shelter. Ms. Thomas testified that she has investigated many other programs for the Appellant. At the time of the Fair Hearing, he had been living at DMH's Crisis Stabilization Unit for approximately fourteen months. According to Ms. Thomas, the average stay at the CSU is six to ten days. Therefore, living at the Crisis Stabilization Unit is not a long-term solution to the Appellant's housing problems. She stated that without proper structure, it is difficult for [redacted] to function in the community, and she fears that if some agency does not assume responsibility for his care, he will

likely be in trouble with the police. [redacted] has made it clear that he wants to live with people of his own age and general ability level.

SUMMARY OF THE EVIDENCE

The only cognitive evaluation in the record was that of David M. Presnall, Ph.D., who met with the Appellant on March 22, 2006 and April 5, 2006 (Exhibit #4). [redacted]'s intelligence was measured on the Wechsler Adult Intelligence Scale—Third Edition (WAIS-III). He achieved the following results:

Verbal IQ	86
Performance IQ	85
Full Scale IQ	85

These scores place him in the low average adult range of intelligence. Dr. Presnall described the Appellant as polite and accommodating. However, this clinician also said that [redacted] was concerned that he was too slow and "expressed fear that he was not meeting standards" that were expected of him (Exhibit #4, p. 2).

The Appellant also completed the Beck Depression Index as part of the assessment. According to Dr. Presnall, [redacted] obtained a moderate to severe overall depression reading" (Exhibit #4, p. 3). His depression apparently dates back to his early adolescence.

Dr. Philip Dingmann, a psychiatrist who has been involved with [redacted]'s treatment since October of 2006, confirmed that [redacted] suffers from major depression. He also testified that he has few interactive skills, and that he acts out when he becomes frustrated. His impulse control is poor. Dr. Dingmann believes that people often dismiss [redacted] because of his speech problems and said that he often feels like an outsider. It is Dr. Dingmann's belief that the Appellant .

Frederick V. Johnson, Psy.D., who is the Eligibility Psychologist for this Region, determined that the Appellant is not mentally retarded (Exhibit #2). In his report dated August 17, 2006, Dr. Johnson stated that both his IQ scores and his adaptive living skill levels disqualified Mr. [redacted] from DMR services. In addition, Dr. Johnson emphasized that the Appellant suffers from significant psychiatric problems. He confirmed the findings of his Eligibility Report in his testimony at the fair hearing.

FINDINGS AND CONCLUSIONS

[redacted]'s case is heartbreaking. I agree with the witnesses who testified on his behalf that this young man has slipped through the cracks, and I share their concern for his future if he does not get the services he so obviously needs. However,

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 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 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 was defined at 115 CMR 2.01 when he applied for Department of Mental Retardation services (see footnote 1 below).

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 had adopted the American Association on Mental Retardation (AAMR) standards as the clinical authority to which it referred in determining whether an individual has "inadequately developed or impaired intelligence," and that standard was in effect when Mr. [redacted] applied for DMR services.[1] 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.

On the only cognitive evaluation in the record (Exhibit #4), the Appellant achieved a Verbal IQ score of 86, a Performance IQ of 85, and a Full Scale IQ of 85, and hence does not have "inadequately developed or impaired intelligence," as defined above. There was no argument or evidence that these scores did not accurately reflect Mr.

[1] Effective June 2, 2006, DMR changed its definition of mental retardation to "significant sub-average intellectual function" as defined by "intelligence indicated by a score of 70 or below..." *See* 115 CMR 2.00. The Appellant filed his appeal before the new definition was adopted.

[redacted]'s intellectual abilities. Thus, I concur with DMR that the Appellant is ineligible for its services.

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: August 30, 2007

Deirdre Rosenberg
Hearing Officer