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Executive Office of Health & Human Services
Department of Mental Retardation
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September 6, 2007

Re: Appeal of [REDACTED] - Final Decision

Dear Ms. [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 approved.

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

Elin M. Howe
Commissioner

EMH/ecw

cc: Deirdre Rosenberg, Hearing Officer
Amanda Chalmers, Regional Director
Marianne Meacham, General Counsel
Veronica Wolfe, Regional Eligibility Manager
Douglas White, Assistant General Counsel
Patricia Shook, Psychologist
Victor Hernandez, Field Operations Senior Project Manager
File

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF MENTAL RETARDATION

In Re: Appeal of ~~_____~~

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 March 9, 2007, at the Department of Mental Retardation's Hogan Regional Center located in Hathorne, Massachusetts. Those present were:

_____	Appellant's mother
Siri Khalsa	Appellant's therapist
Douglas White	Counsel for DMR
Joseph Foley	DMR Eligibility Coordinator
Veronica Wolfe	DMR Regional Eligibility Manager

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

1. Eligibility Letter, 10/26/067
2. Curriculum Vitae of Patricia Shook
3. Eligibility Determination, 10/18/06
4. Neuropsychological and Personality Assessment, 8/6/02
5. "Attention-Deficit/Hyperactivity Disorder," DSM-IV
6. "Mixed Receptive-Expressive Language Disorder," DSM-IV
7. Psychological Evaluation, 3/18/05
8. Intellectual Functioning Evaluation, 10/06/06
9. Stetson School Individual Service Plan, 5/17/05

ISSUE

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

BACKGROUND

The Appellant, [REDACTED], is an almost nineteen year old man with a history of neglect and physical and sexual abuse. He was removed from his biological mother's home when he was ten months old, and was adopted by [REDACTED] and [REDACTED] when he was two years old. [REDACTED] his biological mother's sister. Mr. [REDACTED] has received special education services from the Methuen Public School system throughout his schooling. He has been in residential placements since he was eight years old, and is currently a student at the Stetson School in Barre, Massachusetts. The Stetson School is a residential facility for children and adolescents who exhibit inappropriate sexual behaviors. Currently, he is diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD), Post-traumatic Stress Disorder, Pedophilia, Pervasive Developmental Disorder NOS, and Mixed Receptive-Expressive Language Disorder. In addition, there is documented medical evidence of frontal and parietal lobe anomalies, which may contribute to his cognitive impairments. Mr. [REDACTED] also has a history of fire setting.

SUMMARY OF THE EVIDENCE

The first evaluation of the Appellant in the record was conducted on August 6, 2002, by Richard F. Zapf, licensed psychologist, when he was fourteen years old (Exhibit #4). The assessment was conducted in connection with a regularly scheduled Chapter 766 re-evaluation, using the Wechsler Intelligence Scale for Children--Third Edition (WISC-III) to measure his cognitive abilities. He received the following scores:

Verbal IQ	64
Performance IQ	73
Full-Scale IQ	66

Mr. Zapf's report makes reference to previous IQ testing in 1998, but does not contain any IQ scores from that assessment. The 1998 test itself is not in the record. According to Mr. Zapf, the results from both his 2002 evaluation and the prior one were similar. In addition, this clinician stated that an "assessment through the Aphasia Screening Test revealed continuing language problems that seemed to be associated with both a mixed expressive and receptive language disorder and limited cognition" (Exhibit #4, p. 3). Although Mr. Zapf describes Eric as having borderline intellectual functioning, his full scale IQ of 66 is four points below the cutoff point of 70, which DMR has recently adopted as the IQ number for establishing mental retardation. His academic performance as measured by the WRAT-3 was very poor.

The Appellant was next evaluated on March 18, 2005, by Joel Silver, Ph.D. This assessment, conducted when Mr. [REDACTED] was seventeen years old, was also part of a Chapter 766, three year core re-evaluation (Exhibit #7). He received the following scores, as measured on the Wechsler Intelligence Scale for Children--Fourth Edition (WISC-IV):

Verbal Comprehension Index	61
Perceptual Reasoning Index	75
Working Memory Index	59
Processing Speed Index	65
Full Scale IQ	58

Dr. Silver described his full scale IQ as "extremely low," which, he continued, "indicates highly significantly below average overall intellectual abilities" (Exhibit # 7, p. 4). Dr. Silver also referred to an IQ testing from 1998, in which Mr. [redacted] reportedly achieved a verbal IQ of 90, a performance IQ of 81, and a full scale IQ of 83. This test is not in the record, and could not be the "previous IQ testing" referred to by Mr. Zapf in Exhibit #4, because Mr. Zapf described that previous testing as similar to his own (verbal IQ of 64, performance IQ of 73, and full scale IQ of 66), and clearly it is not. The reported 1998 verbal IQ of 90, which was the higher of the two component scores (verbal and performance) in that particular evaluation, is also suspect because in both the 2002 and the 2005 tests, [redacted] performance IQ scores were significantly higher than his verbal scores. It is unusual to see this pattern reversed. All of this calls into question the validity of the reported 1998 scores, and since I do not have the actual report before me, I have concluded that the only fair thing to do is exclude these test results altogether. As to the Appellant's scores in 2005, I assume from Dr. Silver's positive description of [redacted] at the time of testing ("alert and fully oriented," able to "sustain his attention and effort throughout the lengthy evaluation") that he considered them to be valid representation of his current functioning.

The final cognitive assessment in the record was conducted by the North Worcester Psychological Consultants on October 6, 2006, when Mr. [redacted] was 18 years old and in the eleventh grade (Exhibit #8). He was evaluated using the Wechsler Adult Intelligence Scale-III (WAIS-III), and received the following scores:

Verbal IQ	64
Performance IQ	78
Full Scale IQ	67

The two clinicians who evaluated him concluded that his IQ scores, together with his extremely low scores on the ABAS-II, "qualifies [redacted] for a continued diagnosis of Mild Mental Retardation (Exhibit #8, p. 5). In addition, they stated that [redacted] cooperated with all tasks asked of him and appeared to put forth good effort [and therefore the] test results are believed to be a true representation of his current functioning."

Also in the record was the Stetson School Individual Service Plan dated May 17, 2005 (Exhibit #9). According to this report, [redacted] was at the time doing well at the school, with a breakthrough in therapy and improved behavior being noted by the clinician who wrote it (being of particular note). The report also stated that Mr. [redacted] was doing well in math and had read Hamlet and Of Mice and Men during the reporting period. He was diagnosed with both Mixed Receptive-Expressive Language Disorder and Mild Mental Retardation (Exhibit #9, p. 3).

The service plan also included a speech and language evaluation in which a Clinical Evaluation of Language Fundamentals (3 CELF-3) test was administered. The speech therapist who conducted the evaluation concluded that the Appellant's receptive and expressive language skills were significantly below average. However, she did not make a diagnosis of Mixed Receptive-Expressive Language Disorder.

Dr. Patricia Shook, the Department's Eligibility Psychologist for the Northeast Region, testified that she did not believe that the Appellant is mentally retarded. Although she acknowledged that all of his full scale IQ scores in the record were below 70,¹ she stated that she believed that the cause of his cognitive deficits were more likely attributable to a Mixed Receptive-Expressive Language Disorder than to mental retardation.² Dr. Shook testified that she referred the Appellant to the North Worcester Psychological Consultants (Exhibit #8) after reviewing the results from the 2002 evaluation by Richard Zapf (Exhibit #4) and the 2005 evaluation by Dr. Silver (Exhibit #7). However, she stated that she did not agree with the diagnosis of mild mental retardation made by North Worcester Psychological Consultants because the discrepancy between Mr. [redacted] verbal IQ of 64 and performance IQ of 78 supported, in her opinion, some other diagnosis than retardation.

While I have great respect for Dr. Shook, I disagree with her conclusions regarding the Appellant. First, while it may be true that [redacted] has a Mixed Receptive Expressive Language Disorder, there was no testimony that such a diagnosis is inconsistent with a concurrent diagnosis of mental retardation. The two diagnoses can exist together, and in this case, I believe that they do. Furthermore, in addition to the diagnosis of mental retardation from North Worcester Psychological Consultants, the Appellant was also so diagnosed by the Stetson School (Exhibit #9). Finally, I am reluctant to accept Dr. Shook's determination of ineligibility when his full-scale IQ scores in the three valid cognitive assessments in the record were all below 70, which is where the Department itself has decided that mental retardation exists. To conclude otherwise, the Department should have put forth more compelling evidence in support of its position than it did here. Finally, since DMR concedes that Mr. [redacted] meets its standards in regard to his adaptive living skills, I find that its decision denying him eligibility was erroneous.

¹ According to DMR's regulations, in order to be eligible for its services, an adult applicant must have an IQ of 70 or below. See 115 CMR 2.01.

² For the reasons I have previously discussed, at page 3 of this decision, I am not taking into consideration the IQ results that [redacted] was reported to have achieved in 1998.

FINDINGS AND CONCLUSIONS

After a careful review of all of the evidence, I find that the Appellant has shown 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 Department's definition of mentally retarded as defined 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.

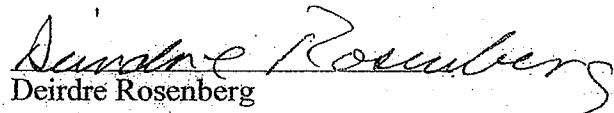
For the reasons stated previously, I find that the Department's decision that the Appellant is ineligible for services is incorrect.

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:

8/6/07


Deirdre Rosenberg
Hearing Officer