

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARY COLLINS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-4055  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was conducted in this case on January 10, 2003, in Shalimar, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mary Collins, pro se  
Ruth Server, her mother  
3811 Sand Dune Court  
Destin, Florida 32541

For Respondent: Eric D. Schurger, Esquire  
Department of Children and  
Family Services  
160 Governmental Center, Bin 410  
Pensacola, Florida 32501-5734

STATEMENT OF THE ISSUE

The issue is whether Petitioner is eligible for services from the developmental disabilities program (DDP) due to mental retardation as defined in Section 393.063(42), Florida Statutes.

PRELIMINARY STATEMENT

By letter dated June 25, 2002, Respondent Department of Children and Family Services (Respondent) denied the application of Petitioner Mary Collins (Petitioner) for DDP services. According to the letter, Petitioner was not eligible for services under the mental retardation category.

By letter dated September 27, 2002, Petitioner requested an administrative review of Respondent's ineligibility determination. Respondent affirmed its decision in letters dated September 16, 2002, and October 4, 2002.

Respondent referred this case to the Division of Administrative Hearings on October 18, 2002. A Notice of Hearing dated November 12, 2002, scheduled the hearing for January 10, 2003.

During the hearing, Petitioner testified on her own behalf and presented the testimony of three additional witnesses. Petitioner offered two exhibits, a composite exhibit identified as P1 and handwritten notes identified as P2, which were accepted into evidence.

Respondent presented the testimony of two witnesses. Respondent offered eight exhibits, R1-R8, which were accepted into evidence.

A Transcript of the proceeding was filed on January 27, 2003. Petitioner filed a Proposed Recommended Order on January 30, 2003. Respondent filed a Proposed Recommended Order on February 6, 2003.

#### FINDINGS OF FACT

1. Petitioner was born on March 20, 1951.
2. Dr. C. Joel, a neuropsychiatrist, evaluated Petitioner on September 8, 1969. Petitioner was 18 years and 5 months old at that time. According to Dr. Joel's report, the Kent Simplified IQ Test indicated that Petitioner's mental age was between 8 and 9 years, with an IQ between 55 and 65.
3. In May 1974, the Georgia Department of Human Resources, Division of Vocational Rehabilitation, determined that Petitioner could not function in a manner conducive to continued substantial, gainful employment.
4. In August 1974, a federal Administrative Law Judge determined that Petitioner was entitled to receive disability benefits from the U.S. Department of Health, Education, and Welfare, Social Security Administration. In the written hearing decision, the Administrative Law Judge referred to a Weschler Adult Intelligence Scale (WAIS) administered to Petitioner on

October 23, 1967, when she was 16 years old. According to the written decision, Petitioner's full-scale IQ was 74 at age 16.

5. On or about February 5, 1979, a clinical psychologist administered the WAIS to Petitioner. On that test, Petitioner had an overall score of 83.

6. In March 1991, Respondent denied Petitioner's previous application for services. Respondent determined at that time that Petitioner was not eligible for services because she was not disabled.

7. Petitioner was evaluated most recently on January 24, 2002, by Robert E. Napier, Ph.D. According to his report, Petitioner had a full-scale IQ score of 72 on the WAIS III.

8. In making eligibility determinations under the mental retardation category, Respondent adheres to its non-rule policy as set forth in its July 1996 Support Coordination Guidebook, which states as follows in pertinent part:

CRITERIA FOR MENTAL RETARDATION

All the following criteria are to be met to be eligible under the category of mental retardation:

a) Performance is two or more standard deviations below the mean on an individually administered intelligence assessment instrument. The instrument should be selected from the following list:

- ◆ Stanford-Binet
- ◆ Applicable Weschler Intelligence Scales, depending on the applicant's age
- ◆ Columbia Mental Maturity Scale
- ◆ Leiter International Performance Scale
- ◆ Hiskey-Nebraska Test of Learning Aptitude
- ◆ Bayley Scales of Infant Development
- ◆ Cattell Infant Intelligence Scale

If an instrument other than the Stanford-Binet or Wechsler series is used as an intellectual assessment, the psychologist's report should state the reason these instruments were inappropriate for the particular applicant.

b) The applicant has significant deficits in adaptive behavior. . . .

c) Manifested prior to the person's eighteenth (18) birthday . . . .

9. Respondent also makes eligibility decisions based on its non-rule policy regarding the diagnostic features of mental retardation as set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, which states as follows in relevant part:

#### Diagnostic Features

The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work leisure, health, and safety (Criterion B).

The onset must occur before age 18 years  
(Criterion C). . . .

\* \* \*

. . . Significantly subaverage intellectual  
functioning is defined as an IQ of about 70  
or below (approximately 2 standard  
deviations below the mean). . . .

10. With the exception of one evaluation in 1969 (after she was 18 years old), Petitioner consistently achieved an overall IQ score of at least 72 or higher. During the hearing, Petitioner presented no expert witness testimony to support her arguments that she is entitled to services from DDP.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569, 120.57(1), and 393.125, Florida Statutes.

12. Petitioner has the burden of proving by a preponderance of the evidence, that she is entitled to receive services from Respondent because she is mentally retarded. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

13. Section 393.063, Florida Statutes, states as follows, in pertinent part:

(12) "Developmental disability" means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

\* \* \*

(42) "Retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. "Significantly subaverage general intellectual functioning," for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. . . .

14. In making eligibility determinations, Respondent is required to consider "information accumulated by other agencies, including professional reports and collateral data . . . ."

Section 393.065(1), Florida Statutes.

15. In this case, Petitioner presented no evidence that she scored two or more standard deviations below the mean score (70 or below) on any IQ test before she turned 18 years of age. Petitioner was a few months over the age of 18 when she was evaluated in September 1969, receiving an IQ score between 55 and 65 on a test that is not listed in Respondent's guidebook. On every other test, Petitioner had an overall score of 72 or higher.

16. Petitioner presented no expert testimony or other persuasive evidence to show that she is entitled to services from Respondent. In fact, the preponderance of evidence indicates that Petitioner's IQ score before age 18 was above the minimum level required for services from the DDP.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Respondent enter a final order affirming its decision that Petitioner is not eligible for services from the developmental disabilities program.

DONE AND ENTERED this 7th day of February, 2003, in Tallahassee, Leon County, Florida.

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SUZANNE F. HOOD  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of February, 2003.

COPIES FURNISHED:

Mary Collins  
c/o Ruth Server  
3811 Sand Dune Court  
Destin, Florida 32541

Katie George, Esquire  
Department of Children and  
Family Services  
160 Governmental Center, Bin 410  
Pensacola, Florida 32501-5734

Paul F. Flounlacker, Jr., Agency Clerk  
Department of Children and  
Family Services  
1317 Winewood Boulevard  
Building 2, Room 204B  
Tallahassee, Florida 32399-0700

Josie Tomayo, General Counsel  
Department of Children and  
Family Services  
1317 Winewood Boulevard  
Building 2, Room 204  
Tallahassee, Florida 32399-0700

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.