



Toll free
877-399-4867

www.vor.net

Executive Director
Julie M. Huso
836 S. Arlington Heights Rd, #351
Elk Grove Village, IL 60007
605-370-4652 Voice
605-271-0445 Fax
Jhuso@vor.net

Dir. of Govt. Relations & Advocacy
Tamie Hopp
PO Box 1208
Rapid City, SD 57709
605-399-1624 Voice
605-399-1631 Fax
Thopp@vor.net

Washington, D.C.
Larry Innis
529 Bay Dale Court
Arnold, MD 21012-2312
410-757-1867 Voice/Fax
LarryInnis@aol.com

November 13, 2012

Marianne Meacham, Esq.
General Counsel
Department of Developmental Services
500 Harrison Avenue
Boston, MA 02118

Re: VOR objections to 115 CMR 2.01 and request that this regulation be stricken.

Dear Ms. Meacham,

I represent VOR, a national organization advocating for high quality care and human rights for people with intellectual and developmental disabilities (I/DD).

Please accept these comments in response to the emergency regulations issued by the Department of Developmental Services (DDS) regarding eligibility of DDS clients for services at 115 CMR 1.02, 115 CMR 2.01 and 115 CMR 6.02, which became effective September 26, 2012.

We are specifically concerned about 115 CMR 1.02 which reads:

The Department [of Developmental Services] is the clinical authority that determines the presence or absence of intellectual disability using the standard set forth at page 5 in the 11th edition of the American Association on Intellectual and Developmental Disabilities

We share the concerns expressed by our statewide affiliate COFAR, our affiliate CCMR, families of individuals with I/DD, and others who uniformly express concern about these proposed regulations.

For the following reasons VOR asks that 115 CMR 2.01 be stricken.

Background

On July 23, 2012, the Massachusetts Court of Appeals court ordered the DDS to redraft eligibility regulations to require that the DDS' definition of intellectual disability be based on "clinical authorities" and not solely on an arbitrary IQ score measurement. (See, [Tartarini vs. Department of Mental Retardation](#), Docket 11-P-1009 (July 23, 2012)).

The Appellate Court expressly stated that DDS' eligibility regulations prior to 2006 were consistent with state law because "intellectual disability" was "determined by clinical authorities." Likewise, the Court found that changes to regulations in 2006 were inconsistent with state law because they "fail to describe the clinical authorities upon which the clinical judgments regarding intelligence are made."

Objections to 115 CMR 2.01

In response to the shortcomings of the 2006 regulation, as identified by the Appellate Court, DDS named itself as the "clinical authority" that will determine eligibility for DDS services based on intellectual disability (*see*, 115 CMR 2.01)/

This action by DDS is a blatant end-run around the Court of Appeals decision which sought an objective, holistic approach to determining eligibility based on "intellectual disability." Certainly, the Appellate Court would not view DDS, which provides services, as an objective, informed, and skilled "clinical authority" for the purpose of determining eligibility for DDS services. The conflict of interest is obvious on its face.

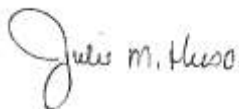
Conclusion

VOR joins COFAR, CCMR, family advocates, Disability Law Center, The Arc of Massachusetts and others in its strong opposition to 115 CMR 2.01.

It is rare when disability organizations so uniformly agree. In this case we stand united due to the real risk of ineligibility for necessary services that enforcement of 115 CMR 2.01 will bring to some individuals with intellectual disabilities. Enforcement of 115 CMR 2.01 gives DDS the opportunity ignore real need and make arbitrary eligibility decisions for purely fiscal objectives. Such a conflict of interest was envisioned by the Court of Appeals in July 2012 and is contrary to the spirit of its decision earlier this year.

115 CMS 2.01 must be stricken.

Sincerely,



Julie Huso
Executive Director