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Mass. rule on mental disability faulted

Court says using IQ is unjustified

By **Patricia Wen** GLOBE STAFF JULY 30, 2012

The Massachusetts Appeals Court ruled last week that the state agency that serves people with intellectual disabilities has failed to justify why it established an IQ score of 70 or below as a major criterion to qualify for services.

As part of the decision, the appeals court judges ordered the state to reevaluate its denial of a 45-year-old Swampscott woman, largely because of her having an IQ score of 71.

The decision was hailed by groups for the intellectually disabled, which have argued that the state's measure of intelligence is too rigid. But state officials maintain that their criteria go far beyond IQ test results, including how well applicants function in society. The state has made no decision yet about whether to appeal Monday's ruling to the Supreme Judicial Court, or adjust its regulatory language in response to the decision.

"It's under review," said Alec Loftus, a spokesman for the state Executive Office of Health and Human Services, which includes the Department of Developmental Services, formerly the Department of Mental Retardation.

The ruling involves the department's decision — upheld by a Superior Court judge — to deny services to Paula Tartarini, whose IQ was one point above the state's standard when she was tested at age 18. In her 40s, however, she once tested at 69. She lives with her mother, and relies heavily on her for daily tasks such as making meals and managing money, her lawyer said. Tartarini also graduated from high school, attended Middlesex Community College, worked at the switchboard at the Federal Reserve Bank, and uses public transportation on her own.

Tartarini's mother said her daughter went smoothly through school in her early years, though not because of her intellectual ability.

"She was passed because she was a nice girl," said her mother, Maria Pescatore, 71, who lives in Swampscott but is originally from Somerville.

Pescatore said she wants state-subsidized housing and other services for her daughter, who was laid off a few years ago, to prepare for the time when Pescatore is no longer alive to care for her.

Tartarini's attorney, Thomas Frain of Bolton, argued that if not for the state's rigid IQ test standards established in 2006, his client may have qualified for the agency's subsidies and help. He said that prior to 2006, the state tied its definition of intellectual disability to the standards of the American Association of Mental Retardation, now called the American Association on Intellectual and Developmental Disabilities, which were more flexible. In a case decided then, he said, a judge once ruled in favor of an applicant seeking services whose IQ scores ranged from 75 to 83.

Frain said the state, worried that loosening standards could lead to runaway costs, revised the regulations, setting an IQ test of 70 or below as the standard of whether someone qualified as having "significantly sub-average intellectual functioning."

However, the state Department of Developmental Services argued in legal briefs that it does not have a rigid cutoff. The agency's attorney said the state considers the margins of error on these intelligence tests, and incorporates "the appropriate exercise of clinical judgment" by qualified practitioners. She also stated that the Massachusetts agency's IQ test standard is used in many other states.

The appeals court ruling acknowledged that the IQ score of 70 has been cited by some other national organizations overseeing mental issues. The judges said the Diagnostic and Statistical Manual of Mental Disorders, widely used by psychiatrists and psychologists, refers to a score of "about" 70 as an upper limit of clinical mental retardation, though the group does not consider it a "bright line."

In its ruling, however, the judges emphasized that the state statute governing this agency requires that its regulations name the "clinical authorities" that determine its definition of impaired intelligence. The 2006 regulations, they ruled, lack any explanation of its reliance on the IQ score of 70 or below. While calling on the state to address this flaw and reconsider Tartarini's case accordingly, the judges added that their ruling does not "express a view whether Tartarini is a person with an intellectual disability."

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