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2013 IL App (3d) 120553-U

Order filed November 5, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

MELISSA B.,)	Appeal from the Circuit Court
)	of the 10 th Judicial Circuit,
)	Peoria County, Illinois
Plaintiff-Appellant,)	
)	
v.)	Appeal No. 3-12-0553
)	Circuit No. 11–MR–194
ILLINOIS DEPARTMENT OF HEALTHCARE)	
AND FAMILY SERVICES; JULIE HAMOS,)	
Director or her successor, in her official capacity;)	
ILLINOIS DEPARTMENT OF HUMAN)	
SERVICES; and MICHELLE R.B. SADDLER,)	
Secretary of her successor, in her official capacity.)	
)	Honorable Michael E. Brandt,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The documentary evidence and testimony presented during the administrative hearing supported the hearing officer's determination that plaintiff was not eligible to receive funding for the non-institutional services she requested pursuant to a Medicaid waiver with respect to a program known as the Home Community Based Services for the Developmentally Disabled.

¶ 2 In 2011, the Department of Healthcare and Family Services (HFS) concluded that plaintiff-appellant Melissa B. (Melissa) was not eligible to receive funding for a community integrated living arrangement (CILA) under a Medicaid waiver for the Home Community Based Services for the Developmentally Disabled (HCBS-DD) program. Melissa unsuccessfully appealed this decision through the proper administrative channels. Finally, Melissa filed a complaint for administrative review with the circuit court. The trial judge upheld the decision of HFS denying Melissa’s request for the specific services and funding because Melissa did not show that her IQ fell below the 70 mark prior to age 22.¹

¶ 3 Melissa filed a timely appeal challenging the HFS decision. We affirm.

¶ 4 BACKGROUND

¶ 5 Melissa was born February 6, 1968. In 2007, Melissa was approximately 39 years old when her attorney, Janet M. Cartwright, contacted the Central Illinois Service Access (CISA), an agent of the Department of Human Services (DHS), and requested a local pre-admission screening to determine whether Melissa would be eligible for developmental disability services funded under the HCBS-DD waiver program.² Melissa was seeking a placement at a community integrated living arrangement (CILA)³ which is defined as a living arrangement where eight or fewer individuals with a developmental disability reside under the supervision of a licensed community developmental disabilities services agency. 210 ILCS 135/3(d) (West 2010); 59 Ill.

¹ Generally, the mental retardation definition requires onset prior to age 18 but, for Medicaid waiver funding purposes, the age of onset must occur prior to age 22.

² On September 27, 2007, attorney Cartwright, an attorney for “Equip for Equality,” obtained an “Order” in Melissa’s guardianship case in Woodford County, Illinois, appointing Cartwright as independent counsel for Melissa and allowing Cartwright access to all of Melissa’s mental health and medical records.

³ CILA is one of the Medicaid waiver services provided to Illinois adults with developmental disabilities under the HCBS-DD waiver program. See *Biekert v. Maram*, 388 Ill. App. 3d 1114, 1118 (2009).

Admin. Code § 120.10.

¶ 6 On February 28, 2008, Lisa Humke, a qualified mental retardation professional for CISA, evaluated and screened Melissa to determine Melissa's eligibility for CILA services as requested by Melissa's attorney. After completing this screening in 2008, Humke concluded Melissa was not eligible for the HCBS-DD waiver program. In a letter sent to Melissa's counsel, Humke indicated there was not sufficient documentation revealing Melissa's developmental disability, mental retardation, manifested itself before Melissa reached 22 years of age.

¶ 7 Melissa appealed CISA's determination that she was not eligible for the HCBS-DD waiver program. Consequently, on July 29, 2008, Vicky Ortega, another qualified mental retardation professional with CISA, conducted a more comprehensive screening of Melissa and her mental health and medical conditions. After this screening, Ortega sent a letter to Melissa and her attorney, on September 25, 2008, explaining Melissa was not eligible for the requested program based, in part, on the lack of documentation showing a developmental disability prior to age 22. Ortega's letter requested Melissa and her attorney to submit additional historical information to CISA, if available, to show Melissa had a developmental disability prior to age 22. Counsel did not provide additional information to Ortega as requested, but elected to appeal CISA's decision to DHS.

¶ 8 DHS conducted an informal review and prepared a written "Informal Review Analysis" report (review analysis) on July 7, 2009, which was based on a review of Melissa's 2004 psychological evaluation, prepared by Alan DeWolfe, a licensed clinical psychologist, and Melissa's 2009 psychological evaluation prepared by Jane Velez, also a licensed clinical psychologist.

¶ 9 DeWolfe's psychological evaluation of Melissa took place in 2004, when Melissa was 36 years old. According to the informal review report, Melissa was referred to Dewolfe for the 2004

evaluation due to her poor impulse control, frequent suicidal thoughts and attempts, auditory and visual hallucinations, social isolation, frequent periods of agitation, and episodic delusional sexual preoccupation. Additionally, Melissa self-reported, during the 2004 evaluation, that she was admitted to the Zeller Mental Health Center (Zeller) four times, beginning at age 19, due to hearing voices and suicide attempts.

¶ 10 Velez's evaluation of Melissa took place in 2009 when she was 40 years old. This 2009 evaluation placed Melissa's IQ at the "high end of mild range of mental retardation," and also diagnosed Melissa with schizoaffective disorder - bipolar type, spina bifida and other health problems. As part of her diagnoses, Velez noted Melissa was exposed to certain psychosocial stressors, including nursing home confinement and severe health problems. Melissa told Velez she had been hospitalized since she was seven years old for medical issues, suicide attempts, and mental health issues related to paranoid schizophrenia.

¶ 11 Further, the review analysis noted that counsel for DHS, on February 5, 2009, made a written request to Melissa and attorney Cartwright to secure all of the records concerning Melissa's admissions to the Zeller. This review analysis stated, on February 10, 2009, Cartwright sent a responsive letter indicating Melissa "opposes the DHS belated move to attempt to access seventeen year old treatment records in a state hospital," and further stated it was their "position that it is unnecessary to provide access to mental health records to establish a developmental disability, when there are two psychological evaluations (referenced above) [the 2004 and 2009 psychological evaluations] that show Melissa has mental retardation." The informal review analysis said DHS, in conjunction with this report, asked Melissa and her attorney to reconsider providing consent for these records from Zeller to determine if clinical evidence existed regarding the manifestation of the a developmental disability during the

proscribed developmental period.⁴

¶ 12 Consequently, on July 7, 2009, DHS delayed making a final decision in Melissa’s case until after DHS pursued a motion to compel asking for Melissa’s mental health records and assessments from Zeller. Sometime thereafter, in lieu of proceeding on the motion to compel, Melissa’s attorney produced a 1993 psychological evaluation from Zeller.

¶ 13 Subsequently, on December 18, 2009, Reta Hoskin, the Associate Director for DHS - Division of DD, issued an “Informal Review Addendum” letter wherein Hoskin outlined excerpts from Melissa’s psychological report from Zeller, dated March 15 and 16, 1993, when Melissa was 25 years old.⁵ In this addendum, Hoskin stated, “We have conducted a review of this [1993] psychological report and continue to conclude that [Melissa] is not a person with mental retardation or a related condition.”

¶ 14 Melissa, through her attorney, filed an appeal with the Department of Healthcare and Family Services (HFS), and HFS appointed a hearing officer, Cassandra Scanlon, who conducted an administrative hearing regarding Melissa’s appeal on April 14, 2010. Melissa was not present at this administrative hearing, but her attorney appeared on Melissa’s behalf.

¶ 15 At this administrative hearing, on April 14, 2010, Terry Braidwood, the program development specialist for DHS, Division of DD, testified about the informal review process used for Melissa’s request for eligibility for CILA services, in 2009. Braidwood discussed the documentation received by DHS and letters and decisions issued by DHS or its agents regarding Melissa’s request for services. Braidwood stated that, although Melissa’s psychological evaluations showed Melissa’s IQ results placed her at a level of “borderline intellectual

⁴ The record indicates these consents were never tendered to DHS.

⁵ Melissa’s entire 1993 psychological report is included in the appellate record.

functioning,” these IQ tests were conducted well after Melissa was 22 years of age. According to the Code, Braidwood said, the onset of mental retardation or related condition must occur before the age of 22 to qualify as a developmental disability for purposes of DD funding and services.

¶ 16 Braidwood explained the earliest report, tendered to DHS, was a 1993 psychological report generated after Melissa was hospitalized and then placed at Zeller on an emergency basis when she was 25 years old. This report noted that Melissa “had a long history of numerous hospitalizations for medical and psychiatric problems.” Braidwood testified that the 1993 psychological report showed Melissa’s overall IQ at 75, making Melissa’s diagnosis “borderline intellectual functioning,” but not mentally retarded.

¶ 17 Braidwood stated, by definition, mental retardation is “characterized as an IQ of approximately 70 or below, with an onset before age 18.” Braidwood said Melissa’s other diagnoses, in this report, were schizophrenia and undifferentiated chronic personality disorder.

¶ 18 Braidwood testified he agreed with the CISA screening report finding Melissa ineligible for DD funding because there was no proof of mental retardation prior to age 22. According to the available records, Melissa attended special education classes in school due to learning disabilities, not mental retardation.

¶ 19 Next, Jane Velez, a clinical psychologist, testified that she performed the psychological evaluation of Melissa in 2009 at the request of Melissa’s attorney. Velez stated she spent four hours with Melissa and determined Melissa had a full scale IQ score of 65. She said she reviewed Melissa’s 2004 psychological evaluation and agreed Melissa’s full scale IQ was measured at 69 in 2004, which still fell below the 70 mark and placed Melissa in the mild mental retardation range.

¶ 20 Velez said, in her opinion, an IQ score remains stable over time, from early childhood to old age, and a true IQ score generally “should fall within a few points of their actual score” from

test to test. Therefore, in Velez's opinion, Melissa's IQ would have also been in the range of mild mental retardation prior to age 22. Velez further diagnosed Melissa with schizoaffective disorder, consistent with mood swings and hearing voices. Velez said she was unable to locate school records or any test data accumulated before Melissa's 22nd birthday, but that did not bar Velez from determining Melissa was mentally retarded.

¶ 21 Velez said she was aware Melissa's history indicated Melissa received special education during her school years for a learning disability, but Velez said her own tests on Melissa, in 2009, showed Melissa did not have a learning disability, which usually shows a low score on an IQ test, but adaptive functioning at a higher level. In Melissa's case, she was low functioning in both areas.

¶ 22 Velez testified she reviewed Melissa's 1993 psychological evaluation from Zeller, showing a full scale IQ of 75. Velez felt it was a flawed report because it was incomplete and based on the Minnesota Multiphasic Personality Inventory (MMPI) test, which requires an eighth grade reading level. Since, Melissa was reading at a fifth grade level, she concluded the test was flawed.

¶ 23 Further, Velez felt Melissa's 1993 evaluation was inadequate because it discussed results of cognitive testing, but it did not include the subtest scores in the report. Since Melissa's IQ testing produced lower results in 2009 and 2004, and the subtest scores were not included in the 1993 report, Velez felt the 1993 report was unreliable. Velez admitted she had no documentation from any other source substantiating that Melissa's IQ was below 70 during her school age years, but there was no reason to believe Melissa's IQ and cognitive skills would have been higher than 70 prior to age 18. Velez also testified that it did not make sense that Melissa would have a higher IQ in 1993 than in 2004 and 2009, therefore, the 1993 tests must be flawed.

¶ 24 Regarding Dr. DeWolfe's 2004 evaluation, Velez said she felt it was a valid evaluation,

although she said she only looked at the IQ results and did not read the whole evaluation. Velez said she did not realize that DeWolfe documented, in his 2004 report, that Melissa attended special education classes while in grade school and high school due to a learning disability.

¶ 25 Next, Lisa Humke, a qualified service professional, testified. Humke explained she conducted the pre-admission screening for CISA in February 2008, regarding Melissa's request for prescreening to determine her DD eligibility. Humke said her agency was contacted by Equip for Equality, in November 2007, to conduct the initial pre-admission screening. Humke said the agency usually contacts a school directly for records only if the applicant left school within the last five years, since schools generally destroy records after five years. Otherwise, the agency will contact the individual, guardian, or legal representative to obtain educational records or other documentation maintained by the family.

¶ 26 Humke testified her supervisor told her to contact Equip for Equality, on November 13, 2007, to see if that agency could assist Humke in obtaining records from El Paso Healthcare, Melissa's current nursing home, to get some more historical documentation or data on Melissa. Pursuant to that request, Melissa's attorney provided CISA with a copy of Melissa's 2004 psychological report, but did not give consent for all the records. Counsel questioned Humke about records CISA compiled concerning Melissa, in 2001, when Melissa made a previous request for DD funding that was denied. Humke explained the records were destroyed after a certain period of time according to CISA's policy after Melissa failed to challenge the 2001 denial.

¶ 27 Humke stated, for purposes of the 2007 request for DD funding, she reviewed the 2001 letter denying Melissa's application for DD services, issued by Humke's CISA predecessor. According to Humke, this letter referred to documentation her predecessor reviewed regarding

Melissa's 2001 application.⁶ This denial letter referred to IQ tests conducted on Melissa in 1989 and 1990, stating her IQ scores were 78 and 72, respectively. Humke also reviewed Melissa's 2004 psychological report as part of her pre-screening process.

¶ 28 In summarizing Melissa's case, Humke testified her pre-admission screen found Melissa was not mentally retarded during the developmental period and did not qualify for the DD funding and placement. After Melissa appealed that initial screening decision, Humke testified CISA completed the level two screening in December 2009, and again found that Melissa was primarily mentally ill, and was not eligible for the HCBS-DD funding or placement because Melissa was not developmentally disabled as defined in the Code.

¶ 29 The HFS administrative hearing officer issued her written decision on March 23, 2011. In this decision, the hearing officer documented nine pages of findings of facts, summarized as follows:

A. Melissa was born February 6, 1968, and receives medical assistance under the Aid to Disabled Program, resides at the [El Paso] nursing home, and receives income from social security.

B. On February 28, 2008, a qualified mental retardation professional (QMRP) [Humke] evaluated Melissa on behalf of DHS Division of DD and determined that Melissa was not eligible for services under the medical waiver⁷ for adults with developmental disabilities because she did not meet the Code's definition of having a developmental disability.

C. On April 25, 2008, Melissa's representative filed a written notice appealing the

⁶ Humke received the copy of that CISA denial letter, dated September 13, 2001, from Melissa's sister and guardian.

⁷ Also referred to as the Home Community Based Services (HCBS-DD) waiver program.

denial of services under the waiver program.

D. On July 29, 2008, another QMRP on behalf of DHS Division of DD [Ortega] re-evaluated Melissa's eligibility and again determined that Melissa was not eligible for developmental disability services under the waiver program.

E. The second QMRP sent notice to Melissa's representative on September 25, 2008, stating Melissa was not eligible for DD services because there was no proof of DD prior to the age of 22; Melissa's special education program during her school age years was based on learning disabilities; Melissa's IQ testing results had varied over the years based on the stability of Melissa's mental health; there was no traumatic brain injury in Melissa's developmental period; Melissa's need for assistance in daily living skills was due to physical disadvantages, environmental exposure, and lack of motivation; and Melissa's seizures have not caused a significant deficit in Melissa's ability to learn.

¶ 30 The hearing officer summarized the testimony of the following witnesses: (1) DHS witness, Terry Braiwood, who agreed with CISA's denial after reviewing the 1993 evaluation by Zeller, the Informal Review Analysis, the 2004 psychological evaluation by DeWolfe; the 2009 psychological evaluation by Velez; and the informal review addendum letter, dated December 18, 2009; (2) Melissa's witness, clinical psychologist Jane Velez, who opined it was obvious that Melissa was mentally retarded prior to age 18 after considering her 2009 IQ tests; (3) DHS witness, Lisa Humke, who conducted the pre-screening on February 28, 2008 by considering the contents of a 2004 psychological evaluation, reporting Melissa's 1989 and 1990 IQ results measuring Melissa's full scale IQ in 78 and then 72 respectively.

¶ 31 In addition to summarizing the testimony of each witness, the hearing officer noted

Melissa's attorney provided DHS with the one 1993 psychological evaluation from Zeller, in spite of DHS requests for additional documentation concerning Melissa's multiple admissions and treatment at Zeller. The hearing officer observed the Zeller report produced by Melissa's counsel measured Melissa's IQ at 75 in 1993, and diagnosed Melissa with schizophrenia, and undifferentiated chronic personality disorder NOS (not otherwise specified) rather than mental retardation.

¶ 32 The hearing officer found, "The age of onset is a very important factor in this case. There were no documents presented that speak to [Melissa's] condition during the age of onset. According to the criteria [DHS] has to use, [Melissa] is simply not eligible for DD Waiver services." Further, the hearing officer found the mild mental retardation diagnosis consistent with Velez's testimony, did not manifest itself until the 2004 and 2009 evaluations, when Melissa was 36 and 40, respectively. Then, citing the administrative rules and definitions, the HFS hearing officer concluded there was insufficient proof that the developmental disability manifested itself before Melissa reached the age of 22. Accordingly, the hearing officer affirmed the decision to deny Melissa's request for funding and services through the HCBS-DD waiver program.

¶ 33 Consequently, on May 5, 2011, Melissa's attorney filed a "Complaint for Administrative Review" with the circuit court asking the court to find the HFS administrative decision is against the manifest weight of the evidence and reverse the decision. The trial court found the evidence showed IQ tests were obtained in 1989, 1990, and 1993, closest in time to Melissa's 22nd birthday, and all showed Melissa's IQ was above 70, which is "the cut-off number for mental retardation." Based on the evidence presented during the administrative hearing, the trial court

affirmed the decision of HSF.

¶ 34 Melissa's attorney filed a timely appeal with this court.

¶ 35 **ANALYSIS**

¶ 36 In the case at bar, the administrative agency denied Melissa's HCBS-DD waiver application for CILA services. On appeal, Melissa claims the HFS hearing officer's decision was clearly erroneous and against the manifest weight of the evidence. Melissa argues the testimony of her expert witness, Jane Velez, established Melissa's mental retardation originated before the relevant age of onset for funding purposes. In contrast, HFS points out other evidence contradicted the conclusions of Melissa's expert. Due to the contested nature of the evidence, HFS submits the hearing officer's findings were neither clearly erroneous nor against the manifest weight of the evidence.

¶ 37 As a preliminary matter we observe that, during oral arguments before this court, both parties argued mental retardation, by definition, must originate prior to age 18 in order for Melissa to qualify for waiver. However, the age of original manifestation of mental retardation is extended to age 22 with respect to Medicaid funding waivers for the State. See 89 Ill. Admin. Code § 140.642. Therefore, during the administrative hearing, the hearing officer and both parties focused on the age of 22 as the cut-off age of manifestation of mental retardation concerning Melissa's eligibility for the program. Similarly, the parties argued the relevant age of onset was age 22 in their respective briefs on appeal. Consequently, we focus on the age of onset as age 22 with respect to the issues on appeal.

¶ 38 When reviewing an administrative decision, the appellate court reviews the agency's decision and not the circuit court's ruling. *Marconi v. Chicago Heights Police Pension Bd.*, 225

Ill. 2d 497, 531 (2006); *Tinder v. Illinois Dept. of Public Aid*, 346 Ill. App. 3d 510, 512 (2004).

To determine the applicable standard of review of an administrative decision, the court must consider whether the question presented is one of fact, one of law, or a mixed question of fact and law. *Marconi*, 225 Ill. 2d at 532; *Biekert v. Maram*, 388 Ill. App. 3d 1114, 1118 (2009).

Rulings on questions of fact will be reversed only if against the manifest weight of the evidence; questions of law are reviewed *de novo*; and a mixed question of law and fact is reviewed under the clearly erroneous standard. *Marconi*, 225 Ill. 2d at 532.

¶ 39 Both parties suggest the issue before this court presents a mixed question of law and fact and is subject to the clearly erroneous standard of review. Our supreme court has defined a mixed question of law and fact as “one ‘involv[ing] an examination of the legal effect of a given set of facts.’ ” *AFM Messenger Service, Inc. v. Dept. of Employment Security*, 198 Ill. 2d 380, 391 (2001) (quoting *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill.2d 191, 205 (1998)). The *AFM* court continued, “Stated another way, a mixed question is one ‘in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or * * * whether the rule of law as applied to the established facts is or is not violated.’ ” *Id.* (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 289 (1982)).

¶ 40 Section 1-116 of the statutory Mental Health and Developmental Disabilities Code provides that “Intellectual disability” (still referred to as “mental retardation” in the Administrative Code) means significantly subaverage general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of

18 years. 405 ILCS 5/1-116 (West 2010); see also 59 Ill. Admin. Code § 120.10.⁸ In addition, the parties do not dispute the Administrative Code provides:

“A developmental disability is a disability that is attributable to a diagnosis of mental retardation (mild, moderate, severe, profound), or a related condition. A related condition is attributable to: cerebral palsy or epilepsy, or any other condition, *other than mental illness*, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for persons with mental retardation. In addition, this condition is manifested before the age of 22; is likely to continue indefinitely; and results in substantial functional limitations in three or more of the following areas of major life activity.” (Emphasis added). 89 Ill. Admin. Code § 140.642(b)(1)(A).

Although the parties agree with respect to the applicable law, the parties strongly disagree whether the evidence presented to the hearing officer was sufficient to establish Melissa’s IQ fell below the level of 70 before she reached age 22. Hence, unlike the parties, we conclude the issue before this court involves a disputed factual issue and, therefore, the standard of review is the manifest weight of the evidence.

¶ 41 The Administrative Review Act provides that the findings of fact of an administrative agency, DHS in the instant case, are held to be *prima facie* true and correct. 735 ILCS 5/3–110 (West 2010); see also *Marconi*, 225 Ill. 2d at 540. When conflicting evidence is presented at the

⁸ The age of original manifestation of mental retardation is extended to age 22 for purposes of funding by Medicaid waivers.

administrative hearing, it is the hearing officer's function, as the finder of fact, to assess the credibility of the documentary information and the testimony of the witnesses and to determine the appropriate weight to be given the evidence. *Marconi*, 225 Ill. 2d at 540.

¶ 42 Importantly, neither party presented any direct documentation of Melissa's IQ either at age 18 or later at age 22. Melissa relies on the testimony of her expert witness, Velez, who testified she evaluated Melissa in 2009 and determined her full IQ was 65. Velez opined that, since IQ's do not vary widely over the course of a lifetime, Melissa must have had a similar IQ prior to age 22 and should be found eligible for funding. Melissa observes Federal courts have recognized mental retardation as "a lifelong condition" (*Guzman v. Bowen* (801 F. 2d 273, 275 (1986))), and "a person's IQ is presumed to remain stable over time *in the absence of any evidence of a change in a claimant's intellectual functioning*" (emphasis added) (*Muncy v. Apfel*, 247 F. 3d 728, 734 (2001)).

¶ 43 Our supreme court has held that the weight accorded expert testimony must be decided by the trier of fact. *In re Glenville*, 139 Ill. 2d 242, 251 (1990). Even if several competent experts share the same opinion and no opposing expert testimony is offered, it is still within the province of the trier of fact to weigh the credibility of the expert evidence and to decide the issue. *Id.*

¶ 44 The hearing officer received a 1993 psychological evaluation, produced by Melissa during discovery, which measured Melissa's full scale IQ at 75 when she was just 25 years old. HFS also introduced a 2004 psychological report, also provided to HFS by Melissa's attorney during discovery, which documented Melissa's full scale IQ was measured at 78 in 1989, 72 in 1990, and 69 in 2004.

¶ 45 Our supreme court has held, "[A] plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden. *Marconi*, 225

Ill. 2d at 532-33. A hearing officer's findings of fact are to be considered *prima facie* true and correct and may only be reversed if they are against the manifest weight of the evidence. *Id.* at 540. Additionally, it is well established that, as long as the record contains evidence supporting the agency's decision, that decision should be affirmed. *Id.* at 540.

¶ 46 In this case, the hearing officer first identified the evidence she considered in nine pages of her lengthy written decision. After carefully detailing the evidence, the hearing officer found Melissa did not establish, to the satisfaction of the hearing officer, that Melissa's mental retardation began before the relevant age of onset for purposes of funding for the residential services she requested.

¶ 47 Melissa contends the 1993 report should not have been considered by the hearing officer as persuasive evidence and argues her expert's opinion should control the outcome of the hearing. However, without considering the 1993 evaluation, the other IQ tests that Melissa did not contest revealed a steady but incremental decline in Melissa's full IQ as she aged. In addition, the hearing officer balanced Velez's expert opinion with the court's observation that Velez conducted the 2009 psychological evaluation that favored Melissa's position, at the request of Melissa's attorney. This credibility determination is beyond the province of this court.

¶ 48 Based on the record, we conclude the HFS decision to deny Melissa's request for eligibility and funding because she was not developmentally disabled was supported by the record, and was not against the manifest weight of the evidence.

¶ 49 CONCLUSION

¶ 50 For the foregoing reasons, we affirm the decision of HFS denying Melissa's eligibility for HCBS-DD funding for a CILA placement.

¶ 51 Affirmed.