

**HEARING DECISION**

**COVER SHEET**

\_\_\_ v. Department of Mental Health

Child:

DOB:

Parents:

Parents' Counsel:

None

Donna Babson

Evaluation Section Supervisor

For the Department of Mental Health:

Kansas City Regional Center

Kansas City, Mo. 64106

Mr. Michael Cato

Hearing Officer:

P.O. Box 668

Advance, Mo. 63730

Due Process Request Received:

May 29, 1998

Due Process Hearing Held:

June 26, 1998

**BEFORE THE DEPARTMENT OF**

**ELEMENTARY AND SECONDARY EDUCATION**

**FIRST STEPS INFANTS & TODDLER PROGRAM**

IN THE MATTER OF \_\_\_

Petitioner,

v.

THE MISSOURI DEPARTMENT OF MENTAL HEALTH,

Respondent.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW,**

### **DECISION AND ORDER**

The hearing panel, after hearing the evidence in this matter makes the following findings of fact and conclusions of law and issues the following decision and order:

#### **FINDINGS OF FACT:**

##### I. PARTIES

1. The child, \_ , at all times relevant to this due process proceeding, resided with his parents within the boundaries of the State of Missouri.
2. The parents of the child are \_.
  - A. The child, \_ , did not attend this due process proceeding;
  - B. The parents of the child were not represented by counsel in this proceeding.
3. Attending on behalf of The Missouri Department of Mental Health was Ms. Donna Babson, Evaluation Section Supervisor, Kansas City Regional Center.
4. The Hearing Officer in this due process proceeding is Michael Cato.

##### II. ISSUES AND PURPOSE OF THE HEARING

Parents became concerned that the child was experiencing some language difficulties. A representative of the local "Parents as Teachers" program indicated to the parents that the difficulties could be significant and indicted that the child should be evaluated for developmental delay, particularly in the area of communication. A referral was made to the Kansas City Regional Center for an evaluation of the child for possible placement in the "First Steps" program. The child was evaluated at the Kansas City Regional Center on May 21, 1998. An assessment staging was held on June 16, 1998. Parents were informed that the child was experiencing some developmental delays particularly in the area of communication. Child was determined to be ineligible for services through the "First Steps" program based upon the results of the evaluation. Parents requested due process on May 29, 1998. This hearing ensued.

Parents raised the following issues;

1. Is the child eligible for services through the "First Steps" program as a child younger than 3 years of age with a 50% developmental delay?

### III. TIME LINE INFORMATION

Parents request due process was received by the Department of Elementary and Secondary Education on May 29, 1998. On June 12, 1998, parents requested an extension of time to hold the hearing and issue the decision. June 15, 1998 the hearing officer grants request for extension and extends time for holding the hearing and mailing decision up to and including July 10, 1998. On June 15, 1998, this matter was set for hearing on June 26, 1998 in the Kansas City Regional Center, Kansas City Missouri. Hearing held as scheduled.

### IV. FACTS

1. The child, \_\_\_ resides with his parents within the boundaries of the State of Missouri and was less than \_ months of age on May 21, 1998.

2. On May 21, 1998, the child underwent a multi disciplinary evaluation at the Kansas City Regional Center. The evaluation was to assess the child's level of development for possible developmental delays and, if appropriate, placement in the "First Steps" program.

3. The evaluation consisted of a "Nursing" assessment, "Speech & Language" assessment, "Occupational Therapy" Assessment, and a "Psychological" assessment.

4. The results of the Nursing Assessment revealed no known medical disorders or diagnosis. (Exhibit 1)

5. The Speech and Language Assessment revealed no known hearing disorder. The Sequenced Inventory of Communication Development Revised Edition was used to evaluate the child's communication development. Developmental delays were noted by the Evaluator. The evaluation indicated a 50% delay in the child's "Expressive" communication but a delay of less than 50% in the area of "Receptive" communication. Speech and language therapy were recommended. (Exhibit 1)

6. The Occupational Therapy Assessment indicated delays of less than 50% of chronological age in Gross and Fine Motor skills and recommended up to 2 hours of Occupational and Physical therapy service per week. (Exhibit 1).

7. The results of else Psychological assessment using the Bayley Scales of Infant Development and the Vineland Adaptive Behavior Scales found some adaptive delays but did not reveal a 50% delay in any one developmental area. (Exhibit 1).

8. No testimony was had, nor documents received, which concerned the parents consent to the evaluation. The parents were present at the evaluation.

9. No objections were raised concerning the qualifications of those individuals administering the evaluations nor of the instruments used to perform the evaluation.

10. No objections, testimony, nor evidence was received which rebutted the administration or conclusions of the evaluations.

11. Parents attended the "Assessment Staffing" on June 19 1997. The child was found ineligible for the "First Steps" programs due to the results of the evaluation.

12. Parents request for due process was received by the Department of Elementary and Secondary Education on May 29 1998. This hearing ensued.

#### V. CONCLUSIONS OF LAW

The Hearing Panel, after hearing the evidence in this matter makes the following Conclusions of Law:

1. The Child resides in Missouri and was \_ mouths of age at the time of the Evaluation performed on May 21 1998. Child was referred for evaluation for possible Early Intervention Services in the "First Steps" program under the criteria in the State Plan for Part H of the Individuals with Disabilities Education Act ("State Plan").

2. The instruments, procedures and measures used to evaluate the child were appropriate and meet the requirements of flee IDEA--Part H, state plan and applicable state and federal regulations. Further that the evaluation included assessment of the child's cognitive communication, adaptive physical and social development as required by the State Plan.

3. The Speech and Language assessment submitted in writing (exhibit 1) as well as the testimony of the Speech Pathologist asserts that the child is experiencing communication developmental delays. The testimony of the Speech Pathologist indicates that while the Sequenced Inventory of Communication Development, Revised Edition is an appropriate diagnostic measure for children, some scoring limitations do exist. The scoring mechanism

allows children to be scored only in 4 monthly intervals with little room for the clinical impression of the evaluators. The testimony further indicated that the communication delay of the child was not typical of children of equal age. The Speech Pathologist left little doubt that the child was experiencing a developmental delay in the area of communication requiring early intervention services irrespective of the child's overall "Communication" developmental score.

The child does not meet the criteria for early intervention services in the "First Steps" program as a child who is functioning at half of the developmental level to be expected for a child of equal age as set out in the eligibility criteria. A strict interpretation of the criteria requires that the child's "Receptive" and "Expressive" scores lie combined to reach an overall "Communication" developmental level. In the instant case the child received a "Receptive" communication age of 20 months and an "Expressive" communication age of 12 months; an average of 16 months. The child's chronological age at the time of the evaluation was 31 months requiring a developmental level of no more than 15.5 months. (State Plan) No precedent was found which would clarify the method to determine a communication developmental delay except as set out above.

4. The child does not meet the criteria for early intervention services in the "First Steps" program as a child who has a "Diagnosed Condition" associated with developmental disabilities. No evidence was adduced which would indicate that the child had any relevant medical conditions or otherwise met the "Diagnosed Condition" criteria.

#### VI. DECISION AND ORDER

The hearing Officer makes the following Decision and Order In this case;

1. The child does not meet the criteria for early intervention services in the "First Steps" program as a child who is functioning at half of the developmental level to be expected for a child of equal age as set out in the eligibility criteria.

#### VII. APPEALPROCEDURES:

Any party aggrieved by the decisions of this panel may appeal this decision as set out in applicable state and federal laws, rules and regulation.

So ordered this 10th day of July, 1998.

J. Michael Cato, Hearing Officer

**CERTIFICATE OF SERVICE**

the undersigned certifies that a copy of the foregoing was served upon each party to this action  
TO-WIT;

Donna Babson

Evaluation Section Supervisor

Kansas City Regional Center

821 E. Admiral Boulevard

Kansas City Mo. 64106

by depositing the same in the United States Post Office in Advance, Missouri, with sufficient  
postage, on this 10th day of July, 1998.