

*Webb v. APD*, 939 So. 2d 1182 (Fla. 4th DCA 2006)

Firm Establishes Standard Used to Determine Eligibility Based Upon Mental Retardation in the State of Florida.

For more than 20 years, the state of Florida arbitrarily denied eligibility to persons who met the threshold established by the Florida Legislature.

In *Webb v. APD*, 939 So. 2d 1182 (Fla. 4th DCA 2006), attorneys with Colodny, Fass, Talenfeld, Karlinsky & Abate, P.A., established the standard used to determine eligibility based upon mental retardation in the State of Florida.

At the age of 9 years old, Joshua Webb came into Florida's foster care system. Prior to applying for APD services, Joshua twice had been evaluated. In 1997, at the age of 10, he received a verbal IQ score of 66, a performance IQ score of 81, and a full scale IQ of 71. In 2003, he received a verbal IQ of 66, a performance IQ of 75, and a full scale IQ of 69.

When the Florida Department of Children & Family Services on Webb's behalf requested waiver services in 2004, Florida's Agency for Persons With Disabilities sent him for a third evaluation. Dr. Janice Wilmoth concluded Webb had a verbal IQ of 77, a performance IQ of 91, and a full scale IQ of 82. Finally, Webb had a fourth evaluation by a court-appointed expert, Dr. Appel, who found a verbal IQ of 66, performance IQ of 81, and a full scale IQ of 71.

APD found Webb ineligible based upon the conclusions of Dr. Wilmoth's evaluation. Webb appealed.

At the administrative hearing, the hearing officer concluded Webb was ineligible for benefits, relying solely upon Dr. Wilmoth's full scale IQ of 82. The Fourth District Court of Appeal determined that the hearing officer relied on the incorrect legal standard, and improperly based his ruling solely on one full scale IQ score, contrary to statutory requirements.

At the time of this decision, APD had no rules in place regarding the types of standardized tests to be used, the interpretation of those tests, or the determination of retardation. After this decision, APD promulgated a rule establishing the type of standardized tests to use. However, its rules still do not

specify that only a full scale IQ should be considered in determining mental retardation. Accordingly, *Webb* established the law that the Agency for Persons with Disabilities cannot pick and choose between available full scale IQ scores to defeat eligibility, but rather must consider *all* scores in making its determination and then look to the persons adaptive or survival skills in determining eligibility.

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