

Since August 1, 2015, the Social Services Appeal Board has published selected decisions on its website. To ensure the privacy of individuals is protected, personal information is redacted from the original Reasons for Decision before the document is posted on the website.

Recently, the Board has heard a number of complex appeals of significant issues. The Reasons for Decision are lengthy and detailed, and attempts to redact personal information render the decisions difficult to understand. The Board has agreed to post summaries of these complex decisions, rather than redacting the original Reasons for Decisions.

Summary - Reasons for Decision:

Order # AP1718-0244

The appellant's parents filed an appeal on behalf of their child, whose application for services from the Community Living disABILITY Services Program was denied.

In order to be eligible for services under the Community Living disABILITY Program (CLDS) an individual must be deemed to be a vulnerable person under The Vulnerable Persons Living with a Mental Disability Act (further referred to as "The Act").

Under the Act, a vulnerable person is defined as: an adult living with a mental disability who is in need of assistance to meet his other basic needs with regard to personal care or management of his or her property.

The Act then defines "mental disability" as: Significantly impaired intellectual functioning existing concurrently with impaired adaptive behaviour and manifested prior to the age of 18 years, but excludes a mental disability due exclusively to a mental disorder as defined in Section 1 of The Mental Health Act.

Legal counsel for the program stated at the hearing that in order to be eligible for the Community Living disABILITY Services Program, an individual must have impaired adaptive behaviour first and, secondly, significantly impaired intellectual functioning. Counsel stated that although there is evidence that the appellant has impaired adaptive behavior, there is no clinical conclusion of significantly impaired intellectual functioning.

Under the WAIS-IV test, an individual's performance is described as falling into one of the following ranges: extremely low; borderline; low average; average; high average; superior and very superior. Test performance falling completely in the borderline, low average, average, or above average ranges signifies a full-scale IQ above 70 and does not indicate significant deficits in intellectual functioning.

The program received an application for the appellant on or about <date removed> from the parents and a social worker with Child and Family Services. In order to

determine eligibility for the program, program staff relies on a professional psychologist to make a clinical conclusion as to whether an individual is living with a mental disability. A psychological assessment was completed on <date removed> and again on <date removed> when the appellant was <age removed> years of age.

The assessment report found that the appellant was in the low average range of intellectual functioning. The low average range is higher than the extremely low range which represents significant impairments in intellectual functioning. As the assessment does not contain a clinical conclusion or interpretation of the derived scores clearly validating that the appellant has significant impairments in intellectual functioning, the appellant is not deemed a vulnerable person as defined in the Act. While the assessment does make diagnoses of <conditions removed> which may give rise to impaired adaptive behavior, it does not establish significantly impaired intellectual functioning.

The appellant attended the hearing with parents <names removed>. A parent stated that the appellant was just assessed with <conditions removed> in <date removed>. The appellant has had many assessments throughout life, and the parents are concerned that if these conditions have been missed throughout all the assessments, what else could have been missed? If the appellant had been diagnosed earlier, the appellant could have had more help at an earlier age. The parents feel that they have lost several years of time during which they could have worked more effectively with the appellant. The parents stated that the appellant cannot function in everyday living situations. The appellant struggles to have appropriate behavior in social settings, doesn't understand money and banking, and cannot solve the simplest of problems. The appellant has a hard time with "emotional intelligence" and is very childlike in certain situations. The parents argue that the appellant's intelligence level is lower than the psychologists' assessments, and the appellant is on a wait list for a second opinion. The appellant is very vulnerable and doesn't listen to the parents' safety concerns about meeting new people, and the appellant needs assistance with daily life. The family also wanted it noted that the Act is extremely outdated (25 years) and needs to be updated to remain current with the mental health system.

After carefully considering the written and verbal information, the Board has determined that the appellant does not meet all the eligibility criteria required to receive services as a vulnerable person under the Community Living disABILITY Services program. All the conditions can give rise to impaired adaptive behavior and being in need of assistance; however, the requirement of significantly impaired intellectual functioning, if not met, does not result in a finding of mental disability as defined in the Act. While it is clear that the appellant does have limitations which create extreme challenges and could certainly benefit from intensive services and supports, the testing does not conclude that intellectual limitations are so significant that the appellant qualifies for services under this program. As there has not been a finding or a clinical conclusion that the appellant has significantly impaired intellectual functioning, the Vulnerable Persons Living with a Mental Disability Act does not provide for discretion in determining eligibility. The Board

therefore confirms the decision of the Director, and the appeal is dismissed.

As part of the Board's advisory role to the Minister, the Board will be bringing forward its findings from this appeal and others, the gap in services to adults who do not fit the criteria of the CLDS program but have extremely low ability to function on their own.

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