

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 # AP1819-0054

In April, 2018, an agency filed an appeal on behalf of a child, who was denied eligibility for Community Living disABILITY Program (CLdS) services.

In order to be eligible for services under CLdS, an individual must be deemed to be a vulnerable person under *The Vulnerable Persons Living with a Mental Disability Act* (“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 defines “mental disability” as:

Significantly impaired intellectual functioning existing concurrently with impaired adaptive behavior 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.

An application was made to CLdS on the child’s behalf. A clinical psychologist conducted a psychological assessment prior to the application being made

The Department determined the child to be ineligible for the program, because significantly impaired intellectual functioning was not present. The letter referenced the criteria of the program, but did not expand on how the child failed to meet the criteria.

In its presentation to the Board, the Department conceded that the child had impaired adaptive behaviour, and that the impairments were manifested prior to age 18. The Department asserted that the child did not have significantly impaired intellectual functioning, and is therefore not a disabled person under the Act.

The Department stated that the scores resulting from an assessment are compared to

results for a statistically normalized population, and consequently have confidence intervals associated with them. Typically, a person with an intellectual disability has a Full Scale IQ (FSIQ) score in the Extremely Low range, with a score of 70 or less, with standard measurement error producing a confidence interval of 65 – 75.

The Department referenced the clinical psychologist's report, noting the domain scores ranged from 74 to 105, while the FSIQ score was 86 (range of 83 to 90). The child's FSIQ score falls completely within the Low Average Range, which is two ranges above the Extremely Low range used as the defining range for significantly impaired intellectual functioning.

The Department asserted the scores did not indicate the child was a person with significantly impaired intellectual functioning, and the child did not meet the definition of a vulnerable person under the *Act*.

The Department directly addressed the comment the clinical psychologist made in the report that the child's eligibility may be established using the adaptive functioning emphasis in DSM-V, suggesting this possibility should be explored. The Department observed this statement does not qualify as a clear finding of intellectual disability.

The Department stated the CLdS Program does place great weight on the psychological assessment, but must make its own decision about eligibility. With great respect, the Department disagreed with the clinical psychologist's qualitative assessment.

While DSM-V allows for a finding of intellectual disability if the FSIQ is higher than 70 if adaptive functioning is extremely impaired, the diagnostic section of DSM-V still sets out 3 distinct criteria for determining impaired intellectual functioning.

The Department accepts that DSM-V has changed how to view impaired intellectual functioning, and the Department is challenged in assessing eligibility according to the DSM- V criteria when program eligibility is binary (in/out), rather than based on level of severity.

The CLdS Program interpretation, in consultation with Department psychologists, is that in the main a person must be 2 standard deviations below the mean to have an intellectual disability, and that only in exceptional cases should eligibility be extended to somebody with an FSIQ above the 65 – 75 range based on his or her adaptive functioning deficits.

The Department asserted that the child's FSIQ is so far above that range that, even with adaptive functioning deficits, the child does not qualify for the CLdS program.

The child's foster mother told the Board a psychological assessment completed in many years ago scored the FSIQ at 60.

The parent stated when the first assessment was completed, the child was experiencing many issues, including behavioural struggles. She asserted the increase in FSIQ was also a reflection of the consistency of the supports the child has had over the years. The parent stated her biggest concern is that the child's progress will come undone if services are not available through CLdS. The child's support network has worked very hard across the board to provide a consistent team approach.

The Board noted the psychological assessment recommended more adaptations for schooling, as well as a mentoring program. The parent told the Board the child was part of a group made up of adults who had come from similar circumstances, and has had modified classes since elementary school.

In response to a question from the Board about a mentor for daily living skills, the child's support worker stated the next step for the child is an independent living program during the transition to the adult system. The independent living program can include a support worker or a mentor.

The Department reviewed the child's scores on the Vineland Adaptive Behaviour Scales, reiterating its position that the child has impaired adaptive behavior, but intellectual functioning is too high to qualify as a vulnerable person under the *Act*.

The Department noted the child likely is eligible for the marketAbilities program, which would provide supports for educational pursuits, job coaches, and job training. The child's support worker pointed out that marketAbilities is only available to a client for a limited time period.

The Board asked the child a series of questions related to adaptive functioning. The child's responses indicated a concern over the ability to function independently.

The Department confirmed the clinical psychologist did not do the actual testing of the child, asserting that it is common practice and common knowledge that clinical psychologists do not administer the tests, but they supervise the testing and interpret the results.

In conclusion, the parent stated, as the child's support for last four years, she has considerable anxiety around the results of this decision. The parent stated she wants the child to have a whole life. The child struggles with adaptive functioning, and is not able to perform routine adult functions like income tax and applying for EIA without supports. She hoped the Board would take these factors into consideration.

The Board appreciated the completeness of the Department's presentation, and the thoroughness of the discussion concerning the statistical nature of the WAIS scores and the meaning of the confidence intervals.

The Board accepts the Department's position that, in the main, a person must be 2 standard deviations below the mean to have an intellectual disability, and that only in

exceptional cases should eligibility be extended to somebody with an FSIQ above the 65 – 75 range based on his or her adaptive functioning deficits.

Based on both the written evidence and the oral testimony at the hearing, the Board acknowledges that the child has significant adaptive behaviour problems, and that these problems will increase in the absence of ongoing supports. On balance of probabilities, the Board finds that the child's adaptive behaviour problems do result in an actual functioning comparable to someone with a FSIQ of 70 or less.

The Board rescinds the decision of the Director and orders the Department to enroll the child in the CLdS Program.

One Board member dissents and finds that, given the child's relatively high level of intellectual functioning, the adaptive behaviour problems do not result in an actual functioning comparable to someone with a FSIQ of 70 or less.

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