

Reasons for Decision:

Order #AP1920-0214

On <date removed>, the appellant filed an appeal of the decision of the Director, Eastman to deny eligibility for the Community Living disABILITY Services (CLdS) program. The letter from the Director communicating the denial was dated <date removed>.

The appellant was represented at the hearing by their parent. <Teacher name removed>, school resource teacher, supported the appellant at the hearing.

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.”

On <date removed>, an application was made to CLdS on the appellant’s behalf by the parent. The application included a psychological assessment completed by <school psychologist name removed>, a school psychologist with <school division removed>, in <date removed>.

The Department also received a second assessment completed by <psychologist name removed> in <date removed>. It was unclear from the evidence presented at the hearing whether the assessment was provided by the appellant or requested by the Department.

In the first assessment, <school psychologist name removed> concluded that the appellant’s Full Scale IQ (FSIQ) score could not be interpreted meaningfully. <School psychologist name removed> did not assess the appellant’s adaptive functioning. In the second assessment, <psychologist name removed> concluded that the appellant’s FSIQ was in the <text removed> range, although the variability in their sub-test scores

meant the FSIQ was not a useful summary of their overall cognitive functioning. <psychologist name removed> concluded that the appellant's adaptive functioning was in the <text removed> range.

At the request of the Department, <psychologist name removed> provided an Assessment of Intellectual Functioning, in which they stated the appellant did not meet the DSM-IV criteria for <text removed>. Based on the evidence submitted, the Department denied the appellant eligibility for the CLdS program.

On <date removed>, the Department sent the appellant a letter advising them that they have been determined to be ineligible for the program because they did not have significantly impaired intellectual functioning. This decision by the Department led to the appeal filed on the appellant's behalf.

In its presentation to the Board, the Department stated the CLdS program does not provide services to a broad range of adults experiencing difficulties living in the community. Services are provided only to those people who are eligible according to the criteria specified in the *Act*.

The Department stated the extent of mental disability is determined by criteria set out in the *Diagnostic and Statistical Manual* (DSM). The Department reviewed the wording of the DSM, noting its close correspondence with the *Act*.

The Department stated the fourth version of DSM (DSM-IV) was the standard when the *Act* was enacted, and the Department's eligibility policy reflects the DSM-IV standard.

The Department acknowledged DSM-V is now the professional standard for determining intellectual disability. While it is true to an extent that there is less emphasis on IQ scores in DSM-V, DSM-V still clearly requires evidence of intellectual impairment. The Department stated intellectual impairment is generally indicated when the FSIQ score is two standard deviations or more from the mean. That standard translates to an FSIQ of 70.

The Department acknowledged that the DSM-V standard considers IQ to be an approximation, and that an IQ above 70 may be effectively lowered by extremely limited adaptive functioning. If the FSIQ is above 70, the assessing psychologist must exercise his or her professional judgement, and determine whether the adaptive functioning is so limited that it results in actual functioning comparable to someone with an FSIQ below 70.

The Department stated it made its decision based on its determination that the appellant did not have significantly impaired intellectual functioning. The Department asserted at the hearing that the appellant also did not have significantly impaired adaptive functioning.

The first assessment was completed when the appellant was <age removed>. <School psychologist name removed> did not determine an FSIQ score or a Working Memory Index. The appellant's Verbal Comprehension was in the <text removed> range, their Perceptual Reasoning was in the <text removed> range, and their Processing Speed was in the <text removed> range. <School psychologist name removed> concluded that the appellant's general intellectual ability could not be interpreted meaningfully.

The second assessment was completed when the appellant was <age removed>. <Psychologist name removed> determined the appellant's FSIQ score was <text removed>, in the <text removed> range. Their Verbal Comprehension was <text removed>, in the <text removed> range. Their Perceptual Reasoning was <text removed>, in the <text removed> range. Their Working Memory was <text removed>, in the <text removed> range. Their Processing Speed was <text removed>, in the <text removed> range.

<Psychologist name removed> also determined that the appellant's FSIQ score was not a useful indicator of their cognitive ability. Since <psychologist name removed> report did not include a specific conclusion about the DSM criteria, the Department asked <psychologist name removed> to complete the Assessment of Intellectual Functioning. <Psychologist name removed> indicated in the form that the appellant did not meet the DSM-IV criteria, and that they had no reservations about the results.

The Department asserted that there was no evidence in the two psychological assessments to support a finding of significantly impaired intellectual functioning.

The Department acknowledged that the DSM-V criteria allow for a determination of intellectual disability when severe adaptive functioning deficits are present. <Psychologist name removed> found a number of adaptive behavior issues, but overall there was variation in the sub-tests, with results ranging from <text removed>. <Psychologist name removed> did not find severe adaptive functioning deficits.

<Psychologist name removed> noted an earlier diagnosis of <diagnosis removed>, and diagnosed two specific learning disorders. The Department asserted that, while these three diagnoses might result in impaired adaptive functioning, they do not meet the criteria for intellectual disability.

The Department noted that, despite the appellant's issues with <text removed> deficits, <psychologist name removed> did not make a finding of intellectual disability using DSM-V criteria.

In summary, the Department submitted that, even if the appellant's FSIQ was determined to be in the <text removed> range, their adaptive functioning deficits were not sufficient to produce an actual functioning comparable to someone with an FSIQ of 70 or lower.

At the outset of their presentation, the parent noted all of the people involved in the appellant's life agreed that they had <diagnosis removed>, and they asserted that <text removed> was an intellectual disorder, not a learning disability.

The parent observed that <psychologist name removed> concluded the appellant was not ready for college, independent living or the workplace without significant supports. <Psychologist name removed> recommended the appellant stay in high school until age <age removed>, but they cannot stay in school in <school division removed> if they are not enrolled in the CLdS program. The parent asserted that other programs recommended for the appellant also required CLdS eligibility.

The parent suggested the appellant's actual FSIQ might fall into the <text removed> range, if the confidence interval around their score of <text removed> was considered. The Department noted <psychologist name removed> reported the confidence interval to be 70 to 80.

<Teacher name removed> told the Board they believe the appellant to be a person in need of CLdS support. They stated that the appellant's intellectual ability is <text removed>. They told the Board they were required to provide modifications for the appellant in a course they taught. <Teacher name removed> acknowledged that the appellant was not in a modified program.

<Teacher name removed> stated the appellant's FSIQ was in the <text removed> range, and their wide range of cognitive deficits and adaptive functioning issues suggested they met the DSM-V criteria.

In response to a question from the Board, the Department stated that, while <conditions removed> and intellectual disability belong to the category of neurodevelopmental disorders, they are separate and distinct disorders. The CLdS program is targeted to people with an intellectual disability.

<Teacher name removed> told the Board the appellant graduated from high school in <date removed>, with an adapted program. In <school division removed>, only students eligible for CLdS can stay in school after graduation.

The parent said the appellant was eligible for the marketAbilities program, but it only provides one or two days per week of job coaching. The appellant is interested in 2-D animation, but their job coaches told them they would have to look at different options, as jobs are limited in 2-D animation.

In previous appeals, the Board has applied the DSM-V criteria when an appellant's FSIQ is <text removed>, and adaptive functioning is in the <text removed> range.

While <psychologist name removed> determined the appellant's FSIQ was <, they expressed reservations about using the FSIQ as a measure of the appellant's cognitive ability. <School psychologist name removed> was so concerned about the reliability of

an FSIQ that they did not determine the score. The Board notes the concern of two psychologists about relying on an FSIQ score as a measure of the appellant's intellectual ability.

While <school psychologist name removed> did not assess the appellant's adaptive functioning, <psychologist name removed> determined the appellant's adaptive functioning was in the <text removed> range. Furthermore, their scores in two of the three domains in the adaptive functioning test fell in the <text removed> range. The Social Composite score fell in the <text removed> range, which is consistent with a diagnosis of <diagnosis removed>.

Regardless of the FSIQ, on a balance of probabilities the Board finds that the appellant's adaptive behaviour problems do not result in an actual functioning comparable to someone with a FSIQ of 70 or less. The appellant does not meet the definition of mental disability contained in *The Vulnerable Persons Living with a Mental Disability Act*. The Board confirms the decision of the Director, and the appeal is dismissed.

For a number of years, the Board has acted in its advisory role to the Minister by raising concerns about the gap in services to adults who do not fit the criteria for the CLdS program but have extremely diminished ability to function on their own.

Furthermore, the Department has told the Board at many hearings in the past year that it is reviewing its eligibility policy in light of changes to the *Diagnostic and Statistical Manual*, but program applicants continue to be subject to a policy the Department has described as outdated.

The Board is concerned that it continues to hear appeals from individuals who require intensive supports but do not qualify for the CLdS program. The Board empathizes with these individuals and their families, recognizing the physical, emotional and financial burden they bear when these individuals cannot access services. The Board will continue to raise this longstanding issue, and urges the Minister to take steps to address the gap in services.

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