

Reasons for Decision:

Order #AP1920-0668

On <date removed>, the worker of <agency name removed> filed an appeal on behalf of the appellant of the decision of the Director, Centralized Services and Resources to deny them 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 worker and their foster parent.

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 their worker. The application included a psychological assessment completed by <psychologist name removed>, a registered psychologist, on <date removed>. The application also included an assessment completed by <school psychologist name removed>, a school psychologist with <school division removed>, in <date removed>.

In their <year removed> psychological assessment, <psychologist name removed> concluded that the appellant presented with Mild Intellectual Disability. However, <school psychologist name removed> concluded in <year removed> that the appellant did not have an Intellectual Disability.

On <date removed>, the Department sent their worker a letter advising them that the appellant had 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 behalf of the appellant.

In its presentation to the Board, the Department noted its complete legal position was outlined in its written report submitted to the Board. In summary, 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.

While the term "significantly impaired intellectual functioning" is not defined in the Act, DSM-V states that intellectual impairment is generally indicated when the Full Scale IQ (FSIQ) score is two standard deviations or more from the mean. That standard translates to an FSIQ of 70.

The Department noted the appellant's application contained two psychological assessments. The first was completed by <school psychologist name removed> when the appellant was <age removed>, and used the Wechsler Intelligence Scale for Children (WISC-V). <School psychologist name removed> did not provide scores, confidence intervals or percentile ranks in their report.

<School psychologist name removed> concluded the appellant's FSIQ fell within the <text removed> range. Their Verbal Comprehension Index and Processing Speed Index fell in the <text removed> range, their Working Memory Index fell in the <text removed> range, their Fluid Reasoning fell in the <text removed> range, and their Visual Spatial Index fell in the <text removed> range.

The Department noted <school psychologist name removed> did not give an FSIQ score, but asserted that an FSIQ in the <text removed> could be inferred from the range. <School psychologist name removed> concluded that the appellant did not meet the criteria for Intellectual Disability.

The second assessment was completed by <psychologist name removed> when the appellant was <age removed>, and used the Wechsler Adult Intelligence Scale (WAIS-IV).

<Psychologist name removed> concluded that the appellant's FSIQ was <text removed>, in the <text removed> range. Their Verbal Comprehension Index and Processing Speed Index fell in the <text removed> range, their Working Memory Index fell in the <text removed> range, and their Perceptual Reasoning Index fell in the <text removed> range. <psychologist name removed> concluded that the appellant met the criteria for Intellectual Disability.

The Department acknowledged that <psychologist name removed> test results were <text removed> than <school psychologist name removed> were. Even then, the confidence interval given by <psychologist name removed> for the FSIQ score <text removed> did not meet the threshold score of 70.

The Department submitted that <psychologist name removed> did not explain why their assessment scores were so much lower than <school psychologist name removed> scores. The Department questioned why a second assessment was conducted after only one year.

The Department acknowledged that <psychologist name removed> submitted an additional letter prior to the hearing explaining her conclusions. The Department submitted that the letter presented no new evidence, but merely confirmed the scores and conclusions in the original report. Even if <psychologist name removed> assertion that the appellant functions in the lower end of the confidence interval was true, the lower end of the confidence interval was still above the threshold score of 70.

The Department stated that, when both assessments are considered, it was reasonable to conclude that the appellant did not have a significant impairment in intellectual functioning.

The Department noted <psychologist name removed> stated the appellant presented as someone younger than their stated age, and that they were vulnerable to being taken advantage of. The Department did not challenge that the appellant was vulnerable within the common understanding of the term, but asserted that they were not vulnerable within the meaning of the Act.

The worker told the Board that the appellant had been diagnosed with <diagnosis removed>, which are mental disabilities. The Department agreed that both <diagnosis removed> are listed as diagnoses in the DSM, but they were separate diagnoses from Intellectual Disability.

The worker submitted that the significantly lower scores in <psychologist name removed> assessment demonstrated that the appellant's intellectual functioning was declining over time. They noted that their General Adaptive Composite score was in the <text removed> percentile. The worker asserted that the appellant's severely impaired adaptive functioning resulted in an actual functioning comparable to someone with an FSIQ <text removed>, and that <psychologist name removed> was reasonable in concluding that they met the DSM-V diagnostic criteria for Intellectual Disability.

The worker suggested that the appellant's <text removed> visual spatial score was influenced by the considerable amount of time they spends playing video games.

The worker told the Board that the consensus of the people who support the appellant was that they will require ongoing supports their entire life.

In response to a question from the Board, the worker stated the first assessment was request by the appellant's previous social worker, while the worker requested the second assessment based on concerns from the foster parent that the appellant was really struggling.

As they have just added the appellant to their caseload, they wanted a more complete understanding of their issues. They added that they were still learning to understand their behaviours and needs.

The foster parent told the Board that the appellant came into their care in <year removed>. They noticed the appellant was developmentally delayed at that time, and they struggled in school. The foster parent asserted that they cannot function on a daily basis without their instructions and continuous prompting.

The foster parent stated the appellant has difficulties with emotional regulation. When they get angry, they throw objects and self-harms.

In response to a question from the Board, the Department stated the two assessments used different tests because the first test was normed for children under the age of 16, while the second test was normed for adults age 16 and over. The tests differ because they are constructed for different age groups, but the scores can be compared because they are standardized.

The Board noted the Department has stated in the past it relies on the judgement of registered psychologists when determining eligibility, and asked why the Department did not defer to <psychologist name removed> conclusion that the appellant met the criteria for Intellectual Disability. The Department noted two psychologists came to different conclusions within one year of each other, and the Department had to exercise its judgement. In the Department's opinion, an individual with an FSIQ score above <text removed> does not meet the criteria for Intellectual Disability.

While the Board tends to prefer assessments that are more recent to older assessments, the Board agrees that the two assessments submitted as evidence occurred so closely together that both must be considered.

The Board does not agree with the Department's implication that <psychologist name removed> bore some responsibility to explain why their results differed from <school psychologist name removed> results. <Psychologist name removed> would have no way of knowing how <school psychologist name removed> administered the tests, or what the circumstances of the appellant's life were at the time of testing. It is possible that <psychologist name removed> is not familiar with <school psychologist name removed> experience level, and therefore has no opinion on the reliability of <school

psychologist name removed> work.

The Board is concerned about the lack of objective data in <school psychologist name removed> report. They did not provide scores or confidence intervals, leaving the reader to infer the mid-point from the ranges they provided. The ranges were quite broad, with significant variations in the possible results. For example, a score in the Very Low to Low Average range could fall between 70 and 80 or between 79 and 89.

On the other hand, <psychologist name removed> report provided detailed scores that enabled the reader to evaluate their conclusions. While the Board acknowledges that <school psychologist name removed> FSIQ range implied a score in <text removed>, the Board is confident that <psychologist name removed> score of <text removed> is an accurate reflection of the appellant cognitive abilities at age <age removed>.

Neither party submitted evidence to explain the difference in the two assessments. However, the worker asserted that the appellant's cognitive abilities are declining relative to their peer group, which would explain the drop in scores.

There is some evidence to support this assertion:

- The appellant's speech and language pathologist concluded they had a significant brain impairment and was a vulnerable child;
- While the appellant had an adapted program in junior high school, <school psychologist name removed> recommended that they have a modified program in any <text removed> school course with strong language demands;
- Subsequent to <school psychologist name removed> assessment, the foster parent's reported that the appellant was struggling to such an extent that the worker believed another assessment was justified; and
- All four domain scores and the FSIQ in the second assessment were consistently one range lower than in the first assessment.

The evidence before the Board is that the appellant's cognitive development plateaued around age <age removed>, and that their scores relative to their peers declined.

The Department has acknowledged a general consensus in the psychological community that an FSIQ score above 70 that falls within the upper end of the confidence interval (71 to 75) may result in an actual functioning comparable to an FSIQ of 70 or lower if the adaptive functioning deficits are severe enough. There is no consensus within the community on how far above 75 a score can be before adaptive functioning becomes irrelevant.

The appellant's score was <text removed>, one point above the confidence interval. <Psychologist name removed> determined that their General Adaptive Composite score was in the <text removed>, which is equivalent to a score between <text

removed>. <School psychologist name removed> determined the appellant's General Adaptive Composite score was <text removed>.

Like the Department, the Board has exercised its own discretion when determining whether to accept the clinical judgement of a psychologist. In the appellant's case, the Board heard evidence indicating their cognitive development has plateaued and their FSIQ is in the <text removed> range, that they have severe adaptive functioning deficits, and that they are a risk to them self. Based on that evidence, and the judgement of <psychologist name removed>, the Board draws its own conclusion that the appellant's adaptive behaviour issues result in an actual functioning comparable to someone with a FSIQ of 70 or less.

On a balance of probabilities, the Board finds that the appellant meets the definition of mental disability contained in The Vulnerable Persons Living with a Mental Disability Act. The Board rescinds the decision of the Director, and orders the Department to enroll the appellant in the CLdS program, effective <date removed>.

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