

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 # AP1516-0031

An appeal was filed on behalf of the appellant as the appellant was denied eligibility for Community Living disAbility Services.

In order to be eligible for services under the Community Living disABILITY Program, 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 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.

The appellant’s application was received on <date removed> accompanied by a psychological evaluation. One of the eligibility criteria of the CLDS Program is that there is a clinical conclusion or interpretation of the derived scores established that the applicant presents with significantly impaired intellectual functioning and that the conclusion must also not contain any reservations that would influence the validity of the results.

When the CLDS program reviewed the psychological report they requested some clarification of some of the test scores and terminology used in the psychological evaluation. The findings state that the appellant’s overall intellectual ability stands in the Borderline range. The psychologist also noted impaired adaptive behavior. The psychologist stated that the findings are suggestive of Mild Intellectual Disability. The CLDS program believed that these comments along with the psychologist’s concerns

regarding the appellant's language difficulties were indicative of reservations in making a conclusive diagnosis of mental disability. The diagnostic summary lists specifically a "(Probable) Mild Intellectual Disability (AKA Mild Mental Retardation)".

The response from the evaluator indicated that it was her opinion that the appellant did meet the diagnostic criteria for an intellectual disability, and that the appellant's most certainly met the criteria of the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition Text Revision (DSM-IV-TR) and the DSM-V criteria for an intellectual disability. It was explained at the hearing the addition of the term probable was not added to the diagnosis due to any doubt, but to mean that in the balance of all probabilities.

After reviewing this information the CLDS program determined that the appellant did not meet the eligibility criteria for significantly sub average intellectual functioning outlined in the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition Text Revision (DSM-IV- TR).

The appellant came to the hearing with a worker from Child and Family Services, the psychologist who completed the evaluation, and the counsellors and support team that work or have worked with the appellant.

In addition to a description of the adaptive behaviour challenges that the appellant faces on a day to day basis, the psychologist also provided an explanation of the test results and the clinical conclusion. The psychologist stated that the evaluation looked at the total picture of the appellant's functioning. She stated that the specific intellectual testing looked at a number of factors, and most people will have results in a similar range across the domains. In the appellant's case the appellant had test scores between the domains that varied significantly and although the appellant did not score in the extremely low or borderline in all areas, it was the psychologist's clinical conclusion that the appellant did have a diagnosis of a mental disability, and definitely met the criteria. The psychologist stated that looking at the appellant's full scale IQ score, the appellant had an intellectual disability.

The psychologist stated that in her practice, and in the way she writes all her reports the word suggestive is routinely used when describing a diagnosis, and does not indicate any hesitancy or reservation regarding the clinical conclusion. She stated she felt that she had explained her use of the inclusion of the word (probable) in her reply to the department, but she would once again explain that she included that word to be the most technically correct as the appellant's scores could possible improve with language therapy, but that in her professional opinion it does not in any way mean the appellant does not meet the diagnostic criteria.

After carefully considering the written and verbal information the Board has determined that the appellant does meet the eligibility criteria for Community Living disAbility Services. It was the Department's determination that the clinical assessment report did not show that a qualified clinician has determined that the appellant presents with

significantly impaired intellectual functioning. In accordance with the program's policy and procedures, in these circumstances, the Program Manager should have sent an Assessment of Intellectual Functioning Form to the assessing clinician in order to request a professional clinical opinion whether the individual presents with impaired intellectual functioning and whether there are any reservations. There was no evidence presented to the Board that this form was ever sent to the clinician. However, verbally, at the hearing the clinician who completed the appellant's evaluation stated unequivocally that she believed that the appellant met the definition as referred to in both the DSM-IV and the DSM-IV (who use differing terminology) and that the appellant should be found eligible for Community Living disAbility Services. Therefore the Board finds that the appellant does meet the definition of a Vulnerable Person and the decision of the Director has been rescinded. The Board orders that the appellant is eligible for Community Living disAbility Services.

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