

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 # AP1819-0108

In May, 2018, a school division 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. Prior to the application being made, a psychological assessment was completed by a school psychologist employed by contract to the school division.

The Department did not accept the child’s application, because the school psychologist who completed the assessment was operating as a private practitioner. The Department’s position was that private practice assessments must be conducted by Registered Psychologists.

The Department’s initial position was that a determination of enrolment or denial had not been made. An application was submitted and an issue was identified in regards to the eligibility process on the psychological assessment. The Department requested

additional information and offered the family assistance. As the Department asserted it had not made a determination if the child was a vulnerable person under the Act, counsel for the Department questioned the Board's jurisdiction. The Board concluded that this is an appealable issue. An application was made to the Department and was effectively denied based on the information submitted, therefore it is within the Board's jurisdiction.

The school division administrator submitted that the school psychologist who completed the assessment was registered as a member of the Manitoba Association of School Psychologists (MASP), and provided a supporting letter from MASP. The letter states that Manitoba school psychologists are regulated by Manitoba Education and Training, and Masters or doctoral-level psychologists who hold a valid school clinician certificate in school psychology may conduct assessments for school divisions on a contract basis.

The school psychologist advised the Board that she has over twenty years of experience in psychology and regularly assesses cognitive assessments.

The school psychologist reviewed the results of the assessment, which concluded the child's Full Scale IQ score fell within the Extremely Low range. The school psychologist's testing revealed the child's core thinking and reasoning skills to be in the Extremely Low range. The child's adaptive skills assessment revealed conceptual skills to be in the Extremely Low range. Taken together, the results revealed that the child has a significant cognitive disability. Ninety percent of the child's scores fell in the Extremely Low range.

The school psychologist told the Board the child's understanding of how to manage various social situations is significantly weak and the ability to do tasks which require conceptual understanding or problem solving is extremely limited. She stated that the child has very low self esteem, in which depression follows. The child was referred for an assessment several years ago, as a result of inappropriate sexual actions and expressed thoughts of suicide. Tasks need to be broken down for the child step by step, and are not remembered from day to day. Reading is a struggle. The child engages in risky behaviour and is a risk to others.

The child's parent advised that the child is no longer a minor, and has had a team of experts assisting throughout the child's entire life. She stated her child wants to be self-sufficient but lacks the ability to remember things. The child cannot fill out forms or manage money, and cannot remember what has been assigned in school or at work. The child struggles with reading, needs constant reminders and needs every step explained separately. This causes frustration, as the child wants to improve, causing the child to give up quickly. The child has started to occasionally use a controlled substance to self medicate.

At the hearing, the Department's Registered Psychologist expressed concern that the child's depression and substance use might have affected the testing scores. She

further stated that she does not find the school psychologist to be qualified to assess intellectual functioning. The program determined that presence of significantly impaired intellectual functioning had not been clinically established to conclude that the child is a vulnerable person as defined in the Act, and is therefore not eligible for services from the program.

In response, the school psychologist described the steps she had taken to control for depression and substance use when she conducted the tests.

After carefully considering the written and verbal information the Board determined that the child does meet the eligibility criteria for Community Living disAbility Services. The child fell within the Extremely Low full-scale range in ninety percent of the testing modules.

Throughout the assessment report, the school psychologist continues to repeat that significant intellectual impairments existed between the scores that make up the full-scale scores. The CLdS policy states that in order to determine if an individual is significantly intellectually impaired, a clinical assessment must be completed by a qualified clinician.

The Board has seen the Department's acceptance of school psychologist assessments on other such appeals. The Board accepts the school psychologist's experience and credentials, and finds the assessment and presentation credible. The school psychologist's assessment used the same assessment tools as a Registered Psychologist would use.

Therefore the Board finds that the child does meet the definition of a Vulnerable Person and the decision of the Director has been rescinded. The Board orders that the child be enrolled for Community Living disABILITY Services.

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