

Reasons for Decision:

Order #AP1920-0154

On <date removed>, <school psychologist name removed>, School Psychologist, and Area Service Director, filed an appeal of the decision of the Director, Downtown/Point Douglas, to deny the appellant 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.

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 <special education teacher name removed>, a special education teacher with the Community Access Program at <school name removed>. The application included a psychological assessment completed by <school psychologist name removed> in <date removed>.

In the psychological assessment, <school psychologist name removed> indicated the appellant’s test scores did not technically place them in the range of an Intellectual Development Disorder, although they did state that the appellant would require substantial programming and supports at school and in the community. Based on that statement, the Department denied the appellant eligibility for the CLdS program.

On <date removed>, the Department sent the appellant a letter advising them that they 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 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*.

When evaluating an application for CLdS services, the Department relies on psychometric testing, adaptive behaviour tests, and the judgement of the registered psychologist as expressed in the psychological assessment report and the Assessment of Intellectual Functioning form.

The Department acknowledged that one consequence of the *Act*'s restrictive eligibility policy is that individuals in the community who have severe adaptive functioning deficits and who may benefit from services do not qualify for the CLdS program, because they do not have significantly impaired intellectual functioning.

The Department asserted that this is the situation the appellant is experiencing. The Department conceded that the appellant had significantly impaired adaptive functioning, manifested prior to age 18. The Department asserted that he did not have significantly impaired intellectual functioning.

The Department acknowledged DSM-V is now the 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 translates to an FSIQ of <text removed>.

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 if the adaptive functioning is so limited that it results in actual functioning comparable to someone with an FSIQ below 70.

In the appellant's case, <school psychologist name removed> determined their FSIQ score was in the <text removed> range, well above the <text removed> range generally indicative of significant intellectual impairment. The assessment determined the appellant's Verbal Comprehension was in the <text removed> range, their Perceptual Reasoning was in the <text removed> range, their Working Memory was in the <text removed> range, and their Processing Speed was in the <text removed> range.

The Department noted <school psychologist name removed> concluded that, while the appellant's overall score did not place them within the DSM-V range for significant intellectual impairment, their scattered performance on the sub-tests and their >text removed> adaptive functioning meant they had a significant functional delay.

The Department also noted that <school psychologist name removed> stated the appellant's cognitive functioning exceeded that of their peers in the Community Access Program, and they recommended the school attempt to integrate the appellant into a few regular classes.

The Department denied eligibility based on the information submitted with the application. <School psychologist name removed> subsequently wrote a letter to the Department urging it to reconsider its decision.

The Department disputed <school psychologist name removed> assertion in their follow-up letter that the denial was based solely on the cognitive scores. The Department stated it looked first to the *Act*, which requires evidence of a significant impairment in intellectual functioning. The Department then considered <school psychologist name removed> entire report, including their conclusion that the appellant did not meet the criteria.

The Department asserted that <school psychologist name removed> focused primarily on adaptive functioning in their follow-up letter, and reiterated that the Department does not dispute that the appellant has significantly impaired adaptive functioning and is in need of services.

While <school psychologist name removed> stressed the increased emphasis on adaptive functioning in the DSM-V, the Department noted <school psychologist name removed> did not argue that the appellant's adaptive functioning deficits were sufficient to meet the DSM-V criteria.

At the outset of his presentation, the parent asked the appellant if they understood any part of the Department's presentation. The appellant indicated they did not understand the presentation.

The parent told the Board they were not in a position to speak about the nature of the cognitive tests. The parent asserted that the appellant has frequently experienced anomalous test results.

The parent told the Board the appellant can learn new skills or tasks, but they cannot generalize those skills and apply them in similar situations. For example, they can take the bus to school, but they cannot take the bus to other locations. The appellant cannot call the phone number on their medication bottle to renew their prescription.

The parent stated the appellant tried a work placement, but their inability to generalize directions was a barrier to success. The appellant has difficulty with skill transitions.

The parent asserted that the appellant's test scores in school had improved because they had been in a program for four years, and had learned the curriculum. The parent submitted that the appellant would have to be integrated into regular classes at the Grade 9 level, despite the fact they were <age removed>.

The parent noted the appellant has a global development delay, so they are exhibiting behaviours similar to people three years younger than their actual age.

The Board asked the appellant a few questions, but they provided limited responses. The appellant told the Board they were interested in computer animation. The parent stated the appellant participated in a graphic arts program placement last year. In the upcoming school year, the appellant's programming will include some classroom integration and more work experience.

In response to a question from the Board, the Department acknowledged that ability to function and need for support were interrelated, but stressed that the number of people who qualify for CLdS under the Act is a much smaller sub-set of the universe of people who have support needs.

The Board noted the appellant had been tested at <age removed>, and asked how the earlier test scores compared with the most recent test. The Department stated the appellant scored lower on the earlier test. <School psychologist name removed> suggested the lower scores might have been the result of testing issues. As well, <school psychologist name removed> suggested the appellant's improvement might be partially due to the presence of supports through the education system.

The Department acknowledged the school supports will end when the appellant finishes school.

The parent told the Board that, as a parent, they want to see the appellant succeed. The parent wants the appellant to eventually move into their own residence, either independently or in a supported setting. The parent stated they hoped the work placements would improve the appellant's chance of employment.

<School psychologist name removed> did not provide an FSIQ score, but did state the appellant's FSIQ was in the <text removed> percentile. The Board notes the <text removed> percentile is equivalent to an FSIQ score of <text removed>, which is at the bottom of the <text removed> range. Previous Board decisions have indicated the Board cannot foresee a circumstance in which an individual with an FSIQ in the Average range would be eligible for the CLdS program.

The Board recognizes that the appellant has significant adaptive behaviour challenges. The Board agrees with the assessment of the appellant's support team that they will require intensive services and supports as they transition out of the school system.

On a balance of probabilities, the Board finds that the appellant's adaptive behaviour issues 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.

In recent appeals, the Department appears to have reverted to its earlier position that significant impairments in intellectual functioning must be manifested separately from significant impairments in adaptive functioning. The Board reiterates its determination that intellectual functioning and adaptive functioning must be evaluated together when intellectual functioning is marginally higher than an FSIQ of 70.

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.

DISCLAIMER

These are electronic copies of the Reasons for Decision issued by the Social Services Appeal Board. These written reasons have been edited to protect the personal information of individuals by removing personal identifiers.