

Reasons for Decision:

Order #AP2021-0032

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

The appellant was represented at the hearing by their parent.

In order to be eligible for CLdS services, 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>, the appellant submitted an application to CLdS. The application was prepared by school representative from <school removed>, and was signed by the appellant and their parent. The application included a psychological assessment completed by <school psychologist removed>, a school psychologist with <school division removed>, in <date removed>.

Around the time the application was submitted, the appellant’s adaptive functioning was assessed by <psychologist removed>, a psychologist with the <school division removed>. In their assessment, <psychologist removed> concluded that the appellant met the Diagnostic and Statistical Manual (DSM-V) criteria for Intellectual Disability.

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 by the appellant. The Department subsequently rescinded the <date removed> letter and issued a new letter on <date removed>, advising that the original

letter was in error and stating that the appellant had been determined to be ineligible for the program because they did not have significantly impaired adaptive functioning.

At the hearing, both parties agreed that the basis for appeal was the determination that the appellant did not have significantly impaired adaptive functioning.

The parent expressed concern that the Department did not take the appellant's low intellectual functioning scores into consideration when it made its decision.

The parent asserted that the appellant struggled with school and with daily living, and that they required access to services after they graduated from school. The appellant stated they had another child with mild cognitive delays, and they have also been diagnosed with a disability. Their entire family would benefit if services were provided to the appellant.

The Department told the Board that 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 stressed that the extent of mental disability is determined by criteria set out in the Diagnostic and Statistical Manual (DSM), and that the wording of the DSM corresponds closely with the *Act*.

The Department noted criteria set out in the *Act* require that there must be both intellectual and adaptive functioning deficits, and those deficits must be manifested before age 18.

The Department conceded that the appellant had impaired intellectual functioning, and that their impairments were manifested prior to age 18. However, the Department asserted that the appellant did not have significantly impaired adaptive functioning, and was therefore not a vulnerable person under the *Act*.

The Department stated the appellant was first tested by <school psychologist removed> at age <age removed>. Their Full Scale (FSIQ) score fell in the <text removed> range. While <school psychologist removed> determined the appellant had significantly impaired intellectual functioning, they did not diagnose an Intellectual Disability because adaptive functioning testing had not been conducted.

Adaptive functioning testing was completed by <psychologist removed>. The appellant's General Adaptive Composite score was <text removed>, in the <text removed> range. Their Conceptual, Social and Practical scores ranged from <text removed>, fully within the <text removed> range.

The Department stated that performance in the <text removed> range indicated significant impairments in adaptive functioning, and asserted that any score above that

range does not indicate a significant impairment. The Department noted that the <text removed> range is two levels above the <text removed> range.

The appellant was tested on nine adaptive skills areas. In two areas, they scored in the <text removed> range. In two areas, they scored in the <text removed> range, and in the other five areas they scored in the <text removed> range. The Department stressed that, of 13 possible scores, no score was in the <text removed> range and only two scores were in the <text removed> range.

Based on the appellant's adaptive functioning results, the Department concluded that they did not have significantly impaired adaptive functioning, and was therefore not a vulnerable person under the *Act*. The Department acknowledged <psychologist removed>' conclusion that the appellant had an Intellectual Disability, but disagreed based on the test results.

The Board noted that <psychologist removed> concluded that the appellant had an Intellectual Disability and would require ongoing supports, and asked the Department if it disagreed with the need for supports. The Department acknowledged that some people who would benefit from CLdS supports did not qualify for the program, particularly people who have been diagnosed with <diagnosis removed> and <diagnosis removed>. However, the Department pointed out that the eligibility criteria for the CLdS program were set out in the *Act*.

The appellant told the Board they were completing their school course work online during the current public health emergency. They planned to attend <school name removed> after graduation to train as a <profession removed>. In their spare time, they liked to play football, work out, read and volunteer.

In response to a question from the Board, the Department stated there are programs the appellant might be eligible for, including Spectrum Connections and Employability Assistance for Persons with Disabilities. The appellant's parent stated the appellant was registered with Spectrum Connections, but the services available were not as comprehensive as the CLdS program.

In the majority of CLdS appeals that come before the Board, the appellant's adaptive functioning is indisputably within the <text removed> range, while the FSIQ is above the <text removed> range. The Board has seen cases where the adaptive functioning is so low as to result in actual functioning that is comparable to someone with an FSIQ of 70 or less, which is the threshold for an Intellectual Disability.

In the appellant's case, their FSIQ is at the mid-point of the <text removed> range, while their adaptive functioning is near the mid-point of the <text removed> range. Neither score is below the threshold score of <text removed>, so it is difficult to conceive of how they actual functioning could be comparable to someone with an FSIQ of 70 or less.

The Board recognizes that the appellant struggles with functioning, and has benefitted from services provided through the education system. The Board notes with approval the appellant's perseverance and commitment to their future.

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. They do 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.

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 the families of these individuals, recognizing the physical, emotional and financial burden they bear when these individuals cannot access services. The Board will continue to raise this issue, and urges the Minister to take steps to address the gap in services.

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