

Reasons for Decision:

Order #AP1920-0625

On <date removed>, the appellant filed an appeal of the decision of the Director, Eastman 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 parents, and CFS worker from West Region Child and Family 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."

On <date removed>, an application was made to CLdS on the appellant's behalf by CFS worker. The application included a psychological assessment completed by <psychologist name removed>, a registered psychologist, in <date removed>. Neither the Department nor the appellant's support team explained the reason for the one-year delay in making an eligibility decision.

In their psychological assessment, <psychologist name removed> did not conclude that the appellant met the criteria for a diagnosis of Intellectual Disability. <Psychologist name removed> did conclude that the appellant met the criteria for <diagnosis removed>.

On <date removed>, the Department sent the CFS 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 by the CFS worker on the appellant's behalf.

In its presentation to the Board, the Department stated the CLdS program provides services only to those people who are eligible according to the criteria for mental disability specified in the *Act*. The program is not available generally to any person with a mental health diagnosis.

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*.

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

The Department acknowledged that DSM-Vis 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 requires evidence of intellectual impairment. The Department stated 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 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 whether the adaptive functioning is so limited that it results in actual functioning comparable to someone with an FSIQ below 70.

The Department acknowledged that an FSIQ score between 71 and 75 falls within the confidence interval for a test result of 70.

<Psychologist name removed> concluded the appellant had an FSIQ score of <text removed>, which is in the <text removed> range. The appellant's Visual Spatial skills and Fluid Reasoning were in the <text removed> range, while their Verbal Comprehension and Working Memory were in the <text removed> range. The Department noted only the appellant's Processing Speed was in the <text removed> range.

The Department asserted that the appellant's scores were not characteristic of significant intellectual impairment, meaning that they did not meet the criteria for Intellectual Disability. The Department noted that <psychologist name removed> did not diagnose an Intellectual Disability, and submitted that the reason she did not make that diagnosis was that the appellants' FSIQ was <text removed> the threshold score of 70.

The Department conceded that the appellant had significant deficits in adaptive function, noting their <diagnosis removed> diagnoses. However, the Department reiterated that it denied eligibility because the appellant did not meet the criteria for significant impairment in intellectual functioning.

The parent acknowledged that the appellant's FSIQ was in the <text removed> range. They stated their support network was very concerned about their adaptive functioning deficits. They referred the Board to evidence they had submitted from medical professionals and community resources detailing the appellant's adaptive functioning issues.

The CFS worker told the Board they have been the appellant's worker for approximately eight years. They asserted that the appellant's behaviour issues are becoming more significant as they get older. They stated the appellant's school grades were acceptable, although they struggles with school.

The CFS worker told the Board that, in their opinion, the appellant is at risk of incarceration without supports.

The parent told the Board the appellant was unable to focus on the present. They do not anticipate working once they are finished school, as they expect they will have a successful career as a performer of "rap"-style music.

The parent stated the appellant has an obsession with energy drinks, and will steal money to purchase them. Both their family and school must supervise them closely to ensure they do not buy the drinks.

The parent asserted that the appellant must be supervised at all times. When they leave the house, either parent follow them at a discreet distance to ensure they do not do anything they are not supposed to do.

The parent stated the appellant did not have critical thinking skills, lacked impulse control, and had little concept of the value of money.

The parent noted the appellant will age out of the CFS system in <text removed> year, but will continue to require supports. The parent believed they would have difficulty maintaining employment, especially since they were unable to maintain a volunteer opportunity because of their inability to focus on the task at hand.

The parent told the Board that the appellant views themselves as a maverick who is not bound by society's rules. They described a number of incidents where the appellant explicitly stated they were not bound by rules, including incidents requiring police intervention. They noted that, not only is the appellant not aware of their limitations, they view their abilities as superior to other people. The appellant is also subject to volatile mood swings.

The CFS worker emphasized that the appellant will require adult supports when they age out of the CFS system. They told the Board that the appellant does not have any connection to their biological family or to the communities their biological family members come from.

In response to a question from the Board, the parent stated the appellant requires multiple reminders to do their chores before breakfast. They then have breakfast, but they are very routine-oriented. When school is not in session, the appellant experiences anxiety and they sleep to escape reality.

The Board noted that <psychologist name removed> report indicated that the appellant was on a wait list for <text removed> treatment. The parent responded that they are seeing a doctor for <condition removed>, but they are resistant to the doctor's advice because they believe they know more than the doctor.

The Board noted that <psychologist name removed> report did not contain an objective assessment of the appellant's adaptive functioning. The Department acknowledged that the report did not contain much detail on adaptive functioning, but asserted that impairment can be inferred from the <diagnosis removed> diagnoses. The parent drew the Board's attention to an e-mail from Southern Health's <text removed> Diagnostic Coordinator detailing some of the adaptive issues.

The Department reiterated that it did not dispute the appellant's adaptive functioning deficits. The Department's position is that those deficits are not manifested concurrently with an intellectual impairment. The Department acknowledged that the DSM-V contemplates the possibility that adaptive functioning deficits can result in actual functioning comparable to an FSIQ score below 70, and that there is no consensus among psychologists about how far above 70 an FSIQ score can be before adaptive functioning deficits become irrelevant to the diagnosis. However, the Department asserted that relatively few psychologists are willing to diagnose an Intellectual Disability as the score rises above 75.

The Department noted an FSIQ of <text removed> is approximately one standard deviation above the threshold of 70.

In response to a question from the Board, the appellant stated the appellant has low self-esteem and has been bullied. At times they have talked about harming themselves and has had to be monitored.

The CFS worker told the Board they were arranging to have an updated assessment conducted before the appellant turns age <age removed>.

The Board notes the significance of the appellant's adaptive functioning deficits is not in dispute. The question before the Board is whether their adaptive functioning deficits result in actual functioning that is comparable to someone with an FSIQ of 70 or less.

Previous Board decisions have indicated the Board believes it would be truly exceptional for eligibility to be granted to someone with an FSIQ higher than the Borderline range. The appellant's FSIQ is clearly in the <text removed> range. Furthermore, the appellant's adaptive functioning deficits are consistent with their <diagnosis removed> diagnoses, and cannot be attributed solely to intellectual disability.

The Board recognizes that the appellant has significant adaptive behaviour problems. 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. 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.

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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