

Reasons for Decision:

Order #AP1920-0696

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

The appellant was represented at the hearing by the CFS worker from <area removed> Child and Family Services.

In order to be eligible for services under CIdS, 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 CIdS on the appellant behalf by their CFS worker. The application included a psychological assessment completed by <psychologist name removed>, a registered psychologist, in <date removed>.

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 had deficits in adaptive functioning, and stated that they would require extensive supports to achieve any level of functioning as an adult.

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 CIdS 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 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.

<Psychologist name removed> concluded the appellant had an FSIQ score of <text removed>, which is in the <text removed> range. The appellant's Verbal Comprehension Index was <text removed>, in the <text removed>. Their Perceptual Reasoning Index was <text removed>, in the <text removed> range. Their Working Memory Index was <text removed>, at the <text removed> range, and their Processing Speed Index was <text removed>, at the <text removed> range.

The Department noted that none of the confidence intervals for the four domain scores extended below <text removed>. In fact, only the Processing Speed Index confidence interval overlapped with the confidence interval for the <text removed>w range, and then only by two points. The confidence interval for the appellant's FSIQ fell fully in the <text removed> range, and was significantly above the confidence interval for a person with significantly impaired intellectual functioning.

In addition to several adaptive functioning deficits, <psychologist name removed> noted the possibility of a verbal learning disability, as well as many significant, unresolved emotional issues.

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 vulnerable person under the *Act*.

At the hearing, the CFS worker explained that the appellant struggles with a range of intellectual tasks and has significant adaptive functioning deficits. They told the Board that a previous assessment conducted in <year removed> found that the appellant had an FSIQ of <text removed>.

The CFS worker asserted that the professional who assessed the appellant for <diagnosis removed> indicated that they might have intellectual functioning in the <text removed> range.

The therapist who administered the most recent intellectual assessment advised the CFS worker that the appellant's FSIQ score was skewed by their <text removed> Perceptual Reasoning score, and that their overall functioning was <text removed> than the FSIQ score indicated. The therapist indicated that the appellant was capable of short periods of higher functioning, but those periods were not sustainable.

The CFS worker noted the appellant had been referred to the Employment Assistance for Persons with Disabilities (EAPD) program, but the program denied his application because he required a higher level of support than the program could provide.

The appellant currently lives in an independent living program. The appellant is attending <text removed> school with an expected graduation date of <date removed>, although they have not attended school for the past several weeks. The CFS worker noted school staff have expressed concern about their ability to support them self as an adult.

The CFS worker stated the independent living program progresses in stages, but the appellant has not mastered the life skills necessary to move past the first stage. They require consistent prompting to get out of bed and go to school. They must be driven to school and to appointments to ensure their attendance. They leave school early every day. They are unable to maintain an orderly home environment.

The CFS worker stated the appellant struggles with communicating their thoughts and feelings, as well as their needs. This creates difficulty for medical appointments, as the agency is no longer his guardian and it is not always aware of the directions given to the appellant by their doctor. For example, the appellant has expressed a desire to reduce their medication, but past attempts to decrease their medication inevitably led to an increase in emotional dysregulation and mental health issues. Their medication must still be administered by staff.

The CFS worker stated the appellant has 24-hour staffing, which is more than other individuals in the program have. They also receives service from an agency worker, a therapist, an elder, an outreach worker and a classroom teacher. They have an Individualized Education Plan (IEP) at school, but failed to complete a work placement. School staff have told the CFS worker that they believe they are not employable, cannot function with basic life skills and will be a risk to them self without adult supports.

In response to a question from the Board, the appellant stated they were not attending

school because they were having difficulty getting out of bed. When they were living with their last foster parent, the foster parent would wake them and drive them to school. The CFS worker noted preparing for school was an ongoing source of conflict between the appellant and their last foster parent. The placement lasted from <date removed> until the appellant turned <age removed> in <year removed>.

The appellant stated when they are not at school they sleep and sit in their room thinking.

In response to a question from the Board, the Department suggested several programs that the appellant might qualify for. The CFS worker responded that the appellant did not qualify for most of the programs listed, as they either did not have an appropriate diagnosis or did not have the funded supports necessary for participation.

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 fully in the <text removed> range.

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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