

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 #AP1819-0119

In May, 2018, a parent 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. A clinical psychologist conducted a psychological assessment, and completed an Assessment of Intellectual Functioning.

In its presentation to the Board, the Department conceded that the child had significantly impaired intellectual functioning, and that this impairment was manifested prior to age 18.

The Department determined the child to be ineligible for the program, because significantly impaired adaptive functioning was not present. The Department stated the clinical psychologist administered two tests of adaptive behaviour – the Street Survival Skills Questionnaire (SSSQ) and the Adaptive Behaviour Assessment System – Second Edition (ABAS-II).

The SSSQ is a measure of basic living ability. The Department stated the child's Full Scale score fell in the Borderline range. There was some variability in the sub-test scores – some scores fell in the Average range, some were in the Below Average range, and some were in the Borderline range.

The ABAS-II assessment involved structured interviews with the child and one parent. The results of both interviews fell in the Borderline range.

The Department stated the clinical psychologist found that the results from both the SSSQ and the ABAS-II assessments were not consistent with a significant deficit in adaptive functioning. On this basis, the Department determined the child was not eligible for the CLdS program.

A teacher from the child's school told the Board the child has been on the case load since 2013. The child came to the school from an external program. Prior to the external program, the child was at a specialized centre in the division, which has a program to address socio- emotional behaviours. The child's learning difficulties manifest in the child's behavior.

The teacher stated the school division tried to transition the child from the specialized centre to a regular school setting, but the transition broke down quickly. The child was then sent to a different program at a different school. There was some progress with his behavior, but little academic progress. The child then moved to a special education program at the current school.

The teacher stated an assessment of the child was completed several years ago by a school psychologist. In addition to confirming the child had a mild intellectual disability, the assessment scored the child in the Extremely Low range for adaptive functioning, using the ABAS-II assessment. The reports were completed by the school and by one parent.

The teacher asserted the adaptive behavior test is subjective, rather than objective. She noted the self-report process requires a person with impaired intellectual functioning to demonstrate a level of meta-cognition he or she may not be capable of. The teacher believed that the child over-rated the child's actual capabilities.

The teacher acknowledged that resource constraints limited the school division's ability to test all students who require assessments, and the Department assists in the process by contracting with a third party to conduct assessments for the CLdS program. The teacher stated an unfortunate consequence of using a third party is that the school is not involved in the assessment, particularly in assessing the student's adaptive behavior in a school setting. The teacher stated the school would have rated the child's adaptive behavior lower than the parent did.

The teacher stated adaptive behavior is assessed relative to a peer group, so it is

important that the person conducting the assessment have experience with a mainstream peer group.

The teacher described the child as rigid and inflexible. The child demands tasks occur in a certain order, and can act out aggressively or violently if the order is changed. The child has social and emotional difficulties, including with relationship boundaries and social media issues.

The child told the Board it is difficult to know when to stop in relationships.

The teacher stated the child is heavily reliant on the parent for socio-emotional regulation. She praised the parent for providing a level of home support that the teacher does not otherwise see in her caseload.

The teacher stated the child lacks financial knowledge, including money concepts and budgeting skills, cannot shop independently, and cannot comprehend continuous instructions.

The teacher stated the child is vulnerable because exploitation by others is a risk. The school has delayed transit training because of its elevated level of concern about having the child in the community. The school team is not sure what will happen if the child is approached by someone in the community.

The parent acknowledged the Department has a policy, but stated anyone who knows the child recognizes the vulnerability. The parent stated the child is aware of the disability and the need for support. The child wants to live independently one day, but cannot menu plan or budget.

The parent stated the child can escalate a situation with people when there is a misunderstanding. The child wants to qualify for a driver license, but the support team is concerned about driving conflict. There would be an elevated risk of personal conflict in a driving situation.

The parent told the Board she is currently receiving six hours of respite per week. She stated she is ready to support the child in adulthood to the best of her ability, but the family needs supports.

In response to a question from the Board, the child identified two different medications being taken, including one for anxiety. The parent stated there is a noticeable change in behavior if a dose is missed.

The child described being able to make simple meals, but often does not. The child's only other chore is to take out the recycling. The child has done laundry with help. The child identified a career as a cook as an option. The child does not know how to find and rent accommodations.

In response to a question from the Board, the Department stated it is always open to

receiving additional information, if it is materially different from information already submitted. A new assessment would not override the current assessment – they would be read together.

In closing, the teacher reiterated that the adaptive behavior self-report is a representation of person's self-image, not necessarily reality. Based on its long history with the child, the school has a very different view of his adaptive functioning.

The teacher told the Board most of the children on her case load end up involved in the justice system, or vulnerable on the streets. The child has stayed safe to date because of the unusual level of family support received. The parent stated she is tired of fighting, and just wants her child to be okay.

The Board notes the sole issue in dispute in this appeal is the child's level of adaptive functioning. The Department submitted evidence of testing done by a clinical psychologist using standard tests, showing the child's adaptive functioning is in the Borderline range.

At the hearing, the Board heard detailed descriptions of the child's adaptive functioning limitations from the teacher and the parent. The report prepared by the clinical psychologist does not discuss many of these limitations, and provides scant information about the child's adaptive functioning beyond a discussion of the scores.

The teacher has extensive experience working with the child, and with other students like the child. The Board places great weight on her description of the child's adaptive functioning, relative to an appropriate peer group, and on the concerns she raised about safety in the community. Based on its interaction with the child at the hearing, the Board shares the teacher's concern that the child over-rated adaptive functioning.

In 2014, both the school and the parent rated the child's adaptive functioning in the Extremely Low range. In 2018, the parent rated the child's adaptive functioning in the Borderline range. While the school did not participate in the 2018 assessment, at the hearing the teacher asserted, based on her experience, that the child's adaptive behaviour is in the Extremely Low range. The child's 2018 self-report is unreliable.

Based on both the written evidence and the oral testimony at the hearing, the Board finds on balance of probabilities that the child has significantly impaired adaptive functioning.

Combined with significantly impaired intellectual functioning, manifested prior to age 18, the Board finds the child has a mental disability as defined by the *Act*, and is therefore a vulnerable person under the *Act*.

The Board rescinds the decision of the Director and orders the Department to enroll the child in the CLdS Program.

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