Reasons for Decision:

Order #AP1920-0011

On <date removed>, <name removed> filed an appeal of the decision of the Director, St. Boniface/St. Vital, 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 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 their Employment and Income Assistance caseworker. The application could not be processed until a signed Release of Information form was received on <date removed>. The application was accompanied by a psychological assessment completed by school psychologist <psychologist name removed> on <date removed>.

In the psychological assessment, <psychologist name removed> indicated the appellant did not clearly meet the criteria for the diagnosis of an Intellectual Development Disorder. Based on that statement, the Department denied the appellant eligibility for the CLdS program. On <date removed>, the Department sent the appellant's caseworker 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.

There is some dispute about whether the appellant received a copy of the letter. The Department noted the appellant was copied on the letter sent to their worker. Both the appellant and their parent had no recollection of receiving the letter. The parent stated they were not aware of the existence of the CLdS program, let alone that an application was made on their adult child's behalf.

The parent became aware of the denied application in <date removed>. When the parent and appellant became aware of the Department's denial, the appellant filed an appeal.

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.

The Department noted the terms used for the eligibility criteria contained in the Act arose from the field of psychology, and the Board should give significant weight to what psychologists think those terms mean. While the Board can exercise its discretion, its starting point should be the analysis conducted by a psychologist.

When evaluating an application for CLdS services, the Department relies on psychometric testing, adaptive behaviour tests, and the judgement of the psychologist as expressed in the psychological assessment report and the Assessment of Intellectual Functioning form. The Department's policy requires that the test results must be clear and conclusive, without any reservations expressed by the psychologist.

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 stated it reviewed <psychologist name removed>'s assessment report when it made its decision. The Department acknowledged that a Full Scale IQ (FSIQ) score of less than 70 showed a statistically significant deficit in intellectual functioning. <psychologist name removed> stated that the appellant FSIQ fell in the Very Low range, with a confidence interval of <text removed>.

The Department noted <psychologist name removed> stated:

> "As the result of the high degree of scatter in the appellant's cognitive profile, they do not clearly meet criteria for the diagnosis of an Intellectual Development Disorder."

According to <psychologist name removed>, <text removed>

The Department stated it relied on the conclusion of <psychologist name removed> that the appellant did not meet the definition of intellectual impairment when it made its decision in <date removed>.

The Department told the Board it understood that the appellant's family believes it did not get notice of the decision and had a right to appeal, even though the appellant was copied on the decision letter. When the appellant appealed, the Department reviewed their file and concluded a new assessment would be useful. It has scheduled an assessment with <doctor name removed> for <date removed>.

The Department maintained that the appellant did not meet the program criteria based on the current assessment, but sufficient uncertainty existed that a new assessment was justified. The Department told the Board it did not dispute doctor's adaptive functioning assessment.

The Department submitted that the Board should adjourn the appeal until the new assessment is completed. The parent did not agree to an adjournment, and the Board determined that the hearing would proceed.

The parent told the Board that their adult child had a cognitive impairment, as well as a diagnosis of anxiety. The parent stated the appellant is an extreme introvert, and never leaves the house. Their doctor prescribed an anti-depressant for the appellant, but they stopped taking the medication because it made them drowsy.

The parent stated the appellant attended school in an individualized program, taking modified courses.

In response to a question from the Board, the parent stated they believed the appellant had a cognitive impairment because they had an assessment done in Grade 4 or 5. The parent remembered the assessment concluded the appellant was cognitively impaired. The parent said there has been no relative improvement in their cognitive functioning since Grade 4.

The Department noted there was a reference in <psychologist name removed>'s assessment report to an assessment conducted when the appellant was nine years old. <psychologist name removed> reported that the assessment determined the appellant's overall cognitive functioning was in the Borderline range. The Department did not have access to the earlier report.

The parent stated they had little knowledge of the CLdS program. The parent was unable to describe what services the appellant required, but stated they would like to see the appellant do something with themselves. The parent thought they should attend

an adult education program, but they would have to change schools because their current school does not offer adult education.

The parent stated they would also like the appellant to start taking their medication again. The parent told the Board the appellant's doctor was aware that they have stopped taking medication.

The parent stated they work out of town for two weeks at a time, and then is home for one week. Their oldest son is <age removed>, and is at home with the appellant when the parent is working.

The Board asked the appellant a series of questions about their future plans, current concerns and expectations for a new assessment. The appellant was largely non-responsive.

The Board noted that, in previous appeals, the Department submitted that the standard for significant intellectual impairment was an FSIQ of 70, plus or minus 5 points. Given that the appellant <text removed>, the Board asked why the Department did not consider the appellant to be eligible. The Department responded that it based its denial on <psychologist name removed>'s conclusion that they did not meet the test for intellectual impairment. The Department stated it was willing to fund a new assessment because the appellant' FSIQ fell within the confidence interval of <text removed>.

In closing, the Department noted the appellant has been diagnosed with anxiety, and asserted that anxiety can affect adaptive behavior without being a sign of impaired intellectual functioning.

In previous appeals, the Board ruled that it will use DSM-V criteria for determining whether an appellant meets the eligibility criteria set out in the Act. When an appellant's FSIQ falls between 70 and 75, the appellant's adaptive functioning must be assessed to determine if the appellant's actual functioning is comparable to someone with a FSIQ of 70 or less.

<Psychologist name removed> concluded that the appellant's FSIQ was <text removed>, with a confidence interval of <text removed>. The psychologist assessment results at age <age removed> were broadly consistent with the reported results of the assessment at age<age removed>. The parent told the Board the appellant' cognitive functioning has shown no improvement since age <age removed>.

The Board notes that, in previous appeals, it has ordered the Department to enroll appellants when their FSIQ has been 75 or lower and their adaptive functioning has been in the Extremely Low range. In the appellant's case, on a balance of probabilities, the Board determines their cognitive functioning and adaptive functioning at age 18 have resulted in an actual functioning comparable to someone with a FSIQ of 70 or less.

The Board rescinds the decision of the Director and orders the Department to enroll the appellant in the CLdS Program, effective <date removed>.