Reasons for Decision:

Order # AP2021-0091

On <date removed>, the appellant's advocate filed an appeal, on behalf of <name removed>, of the decision of the Director to deny them eligibility for the Community Living disABILITY Services (CLdS) program. The letter from the Director communicating the denial was dated <date removed>.

<name removed> was represented at the hearing by legal counsel, <legal counsel name removed>, and was accompanied by advocate and foster 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 or her 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 the CLdS program on the appellant's behalf by the advocate. Included with the application was a psychological assessment completed by <doctor name removed>, a registered psychologist, on <date removed>. In their report the doctor concluded that the appellant has an intellectual disability.

On <date removed> the Department sent the advocate a letter advising that the appellant had been found ineligible for the program as they did not have significantly impaired intellectual functioning. This decision by the Department led to the appeal filed on behalf of the appellant.

In its presentation to the Board, the Department noted its complete legal position was outlined in its written report submitted to the Board. In summary, 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.

While the term “significantly impaired intellectual functioning” is not defined in the Act, DSM-V states that 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 assessing psychologist must exercise his or her professional judgement when evaluating assessment results, particularly when the FSIQ is above 70, and determine whether the adaptive functioning is so limited that it results in actual functioning comparable to someone with an FSIQ below 70.

<doctor name removed> concluded the appellant’s FS IQ score was <text removed>, which fell within the borderline range. The Department noted that none of the appellant’s domain scores fell in either the extremely low or borderline range.

In their conclusion <doctor name removed> indicated that as a result of the appellant’s cognitive abilities, and their adaptive functioning, they met the DSM V criteria for an intellectual disability. The psychologist noted in their report: “<name removed> score on the Adaptive Behavior Composite indicates that less than 1 per cent of people have lower adaptive behavior scores than <name removed>.” The Department conceded that the appellant has impaired adaptive functioning, but asserted that is not equivalent to a finding that they have significantly impaired intellectual functioning. The Department argued that significantly impaired adaptive functioning by itself does not grant eligibility for the program, rather, impaired adaptive functioning must exist concurrently with significantly impaired intellectual functioning.

In summary, the Department considered all the information available to it, including the findings in <doctor name removed>’s report, and concluded that the appellant did not have severely impaired intellectual functioning.

The appellant’s lawyer told the Board that <doctor name removed> used their clinical judgement and clearly stated in their report that the appellant has an intellectual disability. Additionally <doctor name removed>’s report clearly sets out the appellant’s adaptive impairments.

The appellant's lawyer argued that the challenges faced by the appellant in their daily life support <doctor name removed>'s finding of an intellectual disability.

The appellant's foster parent described the appellant's adaptive challenges, which include an inability to understand instruction, self isolation, lack of social skills, and an inability to care for themselves on their own.

The appellant's foster parent noted that the appellant has life-threatening medical needs, and would not be able to adhere to the dietary restrictions that result from their condition, or be able to attend the required hemodialysis appointments. The appellant's foster parent felt that the appellant would not survive if they did not have supports in place.

The appellant's lawyer asserted that the Department did not take into consideration the changes in the DSM V, which take a broader approach when considering cognitive abilities, when it denied the appellant eligibility for the program. The appellant's lawyer argued that the appellant's adaptive functioning impairments are severe enough that they meet the DSM V criteria for an intellectual disability.

In response to a question from the Board, both the Department and the appellant's lawyer agreed that <doctor name removed>'s comment - that the test results were a reasonable representation of the appellant's functioning - was in reference to both the adaptive and cognitive tests.

The Board asked the Department if it relied on a second psychologist's opinion or input from another professional when it disagreed with <doctor name removed>'s clinical opinion. In response, the Department indicated its process is to review the psychological report with a departmental psychologist and the program specialist before a decision on eligibility is made. The Department indicated that while it puts considerable weight on the psychological report, the psychologist's conclusions are not determinative of an individual's eligibility for the program. In the appellant's case, while <doctor name removed> concluded they had an intellectual disability, the Department determined that they did not have significantly impaired intellectual functioning, as required by The Act.

The Board notes the Department disagreed with <doctor name removed>'s clinical judgement when it determined the appellant did not have significantly impaired intellectual functioning. In this appeal, as in previous appeals, the Department has disagreed with the clinical judgement of the assessor when it believed the assessor's conclusion was not reasonable. The Board notes that the Department has not submitted

any evidence from a qualified medical professional to explain its decision to reject <doctor name removed>'s clinical judgement.

Without any evidence from a qualified professional to refute <doctor name removed>'s conclusions, the Board is satisfied that their judgement was reasonable, as their explanations were supported by their clinical findings.

The Board therefore finds, on a balance of probabilities, that the appellant's cognitive functioning is consistent with an FSIQ score below 70. This indicates significantly impaired intellectual functioning.

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