

FINAL DECISION

Sent via email [REDACTED], Certified-Mail [REDACTED] and First-Class
U.S. Mail

May 12, 2025

[REDACTED]

RE: Final Decision

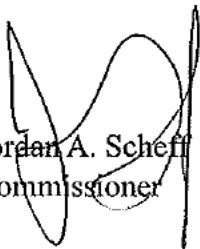
Dear [REDACTED]

On March 14, 2025, the proposed decision of the hearing officer regarding the eligibility of [REDACTED] to receive services of the Department of Developmental Services was sent to you and all parties. Parties had ten (10) business days from receipt of the proposed decision to submit comments in support or opposition. Comments were submitted by the petitioner. No comments were submitted on behalf of DDS.

After reviewing the proposed decision, the record, including exhibits submitted at the hearing, and your comments, I agree with the hearing officer, adopt the Proposed Decision as the Final Decision, and find that [REDACTED] is ineligible for services of the Department of Developmental Services pursuant to Connecticut General Statute section 1-1g.

If you do not agree with this decision, you have the right, in accordance with Section 4-183 of the Connecticut General Statutes, to appeal to the Superior Court. Such an appeal must be submitted within forty-five (45) days of the mailing of this final decision.

Jordan A. Scheff
Commissioner



Enclosures

cc: Attorney Thomas C. McNeil, Jr, Hearing Officer
Attorney Gerald B. Gore, DDS Staff Attorney 3
Attorney [REDACTED] Petitioner's Attorney
Kathleen Murphy, Ph.D., Director, Eligibility Unit
Margret Rudin, Ph.D., Psychologist Eligibility Unit
Marjorie O. Wakeman, Director, Legal & Government Affairs

STATE OF CONNECTICUT
DEPARTMENT OF DEVELOPMENTAL SERVICES
PROPOSED MEMORANDUM OF DECISION
ELIGIBILITY HEARING

IN RE: [REDACTED]

March 3, 2025

Introduction:

On August 30, 2024 at 10:00am, a remote hearing was held pursuant to hearing guideline issued by the Department of Developmental Services, 460 Capital Avenue in Hartford, Connecticut to determine the eligibility of [REDACTED] for services from the Department of Developmental Services (DDS) pursuant to Connecticut General Statutes §1-1g. The request for a hearing was filed on September 28, 2022 by [REDACTED], the Petitioner's mother. Petitioner's Exhibit 5, (hereinafter as P5) Transcript page 24.

Parties in Attendance:

[REDACTED]	Petitioner
[REDACTED]	Mother and Conservator
[REDACTED]	Father
[REDACTED]	Attorney for Petitioner
Gerald B. Gore	DDS Staff Attorney
Dr. Kathleen Murphy	DDS Director Eligibility
[REDACTED]	Private Psychologist for Petitioner
[REDACTED]	[REDACTED] Coordinator Support Services
[REDACTED]	[REDACTED] Paraprofessional

Statement of Issue:

Does [REDACTED] meet the requirements of Connecticut General Statutes §1-1g making him eligible for offerings by Department of Development Services?

Exhibits entered into to Evidence:

The sworn testimony of August 30 is T1, October 16 is T2, and December 20 is T3 all in 2024 and the exhibits as attached hereto as Eligibility Hearing Exhibit List.

Finding of Facts:

1. On May 9, 2019 Dr. Kathleen Murphy issued a denial of eligibility letter indicating that [REDACTED] did not meet the criteria for DDS services based upon Intellectual disability. P1, T2 page 202. The letter stated "that deficits-in intellectual functioning and adaptive behavior must have existed at the same time, and most have originated during the developmental period. The development period is the time between birth and before the age of eighteen. However, this communication did make [REDACTED] eligible for the State of Connecticut Autism program but that program has a significant waiting list before services can be provided. DDS 5. T2 page 128.
2. There is one application for intellectual disability and autism, however, there are different programs of services for the two areas. T2 page 97- . In part, DDS was thrown by the application with a yes check for [REDACTED] being diagnosed with Autism and a no check for [REDACTED] being diagnosed for developmental disability. T2 page 98.
3. On December 6, 2019, hearing officer Ury issued a decision denying DDS intellectual disability services finding that [REDACTED] did not meet statutory requirements. DDS 3. At this hearing [REDACTED] were not represented by counsel. T page 16.
4. On September 28, 2022, [REDACTED] Mother and Conservator, [REDACTED] made another hearing request indicating she had submitted additional information. HO 2 and T page 7.

5. On February 15, 2023 DDS issued a hearing date letter for a hearing on April 6, 2023 at 1pm. HO 3.
6. On May 6, 2024, DDS set a new hearing date for August 30, 2024 at 10am. HO 4. At this hearing the [REDACTED] were represented by Attorney [REDACTED] T pages 7, 16. Normally, an appeal of Hearing Officer Ury's decision would be to the Superior Court, however, the DDS Commissioner granted this hearing request. T pages 16 to 20.
7. At the hearing, Petitioner (date of birth [REDACTED]) lived with his family in [REDACTED] Connecticut and he was 23 years of age. T1 page 34. [REDACTED] mother describes him as tall, handsome, stocky and strong built young man. He is friendly, caring and polite. Yet, he is unaware of space and may walk too fast to bump into others in front of him. T1 page 36. [REDACTED] mother is appointed as his conservator of person and estate pursuant to CGS 45a-650. The Conservator Appointment came after the [REDACTED] application to DDS. T2 page 199. She is his representative payee for Social Security payments. T2 page 121-125; 138-139.
8. [REDACTED] has auditory processing issues resulting in poor comprehension and communication skills. He did not start to speak until he was 5 years old. T1 pages 37 to 40. Even at 16 years of age [REDACTED] could not navigate a transportation system, could not do all his personal grooming, could not prepare his meals but he could brush his teeth and comb his hair. Yet, with 1 to 1 support [REDACTED] could do all these functions. T2 pages 107 to 114.
9. Attorney [REDACTED] argues that [REDACTED] has autism and intellectual disabilities. T1 page 31. On August 30, 2024 the first witness, [REDACTED] is the special education coordinator for the [REDACTED] School System. She participated in [REDACTED] IEPs-Individual Education Plan. T1 40 to 43. [REDACTED] testified that [REDACTED] primary disability was Autism. T1 page 45, P14(6/13/2016 IEP for [REDACTED]) at page 1 (P15 IEP dated 04/17/2017) page 1. The later IEP at page nine indicates that due to cognitive issues and language delays [REDACTED] was not able to take the 10th grade normal assessment exams. T1 page 62. [REDACTED] had a 1 to 1 paraprofessional that was with him during the school day. T1 page 52.
10. [REDACTED] also runs the post high school program called [REDACTED] This program is for students in need of additional transition, education, life skills education, prevocational education, and continued academics. [REDACTED] participates in the [REDACTED] program. T1 page 54. [REDACTED] needs specialized support to develop employability skills. T page 60. Due to [REDACTED] cognitive deficits, social communications, behavioral regulation he cannot communicate with adults or his peers. (P16 IEP dated 3/28/2018 at page 5) T1 pages 63 and 64. On P16 page 1, the Autism box is checked and the box for multiple disabilities is left unchecked. P16 box for Activities of

Daily Living is check which means [REDACTED] is at grade level. T1 pages 71 to 75. [REDACTED] participates in the [REDACTED] program and actually works where he is washing dishes, cleaning floors, restocking beverages, packaging cookies and croissants that are already baked by other colleagues. He's also is packaging fruit cups or cheese and crackers, or french fries. [REDACTED] cleans and sanitizes the counters and appliances. T2 from October 16, 2024 at page 26.

11. On August 30, 2024, [REDACTED] testified as being the paraprofessional who was with [REDACTED] on a 1 to 1 during the school day when [REDACTED] was in his senior year in high school at 17 years of age. T1 pages 81 and 82. [REDACTED] was with [REDACTED] throughout the school day helping with class assignments, keeping him on task making sure he went to class to lunch to the rest room and looked both ways before crossing the street as applicable. T1 page 83 and 86. [REDACTED] saw [REDACTED] as having autism and intellectual disability but 90% of the kids she worked with were Autistic. However, no testing was cited to document intellectual disability. T1 pages 100-103.
12. [REDACTED] a board certified behavior analyst and psychologist testified on behalf of Petitioner. T2 page 45. The diagnostic criteria that Psychologist use is based upon the Statistical Manual of Mental Disorders, Fifth Edition. It describes cognitive abilities and adaptive functions of an individual. T2 page 51. Seventy percent of people with autism also had an intellectual disability. As time has passed on, we've recognized individuals with autism without intellectual disability. So right now it's about 30 percent of the people with autism also meet the criteria for intellectual disability, and about 10 percent of all people with an intellectual disability have autism. T2 page 57.
13. According to [REDACTED] in the State of Connecticut you can show an education impairment by falling into one of 13 Categories. Two of those categories are autism spectrum and intellectual disability, however, in Connecticut you can select only one category. T2 page 58-59. In the 11th grade on March 23, 2018 [REDACTED] was excluded from the District Wide Assessment because of Cognitive, Social and Communication Delays. Thus, [REDACTED] took an alternative assessment. P16 page 9, T2 page 60. When you have wide variations in the index scores that make up the IQ score best practice is to also look at Adaptive Scores to get a full picture of a child's development. The IQ score is more reliable once the child reaches 8 years of age. T2 pages 63-64, 74. When focusing on Adaptive behavior you are looking at the child's approach to daily living. You are focusing on Communication, Social and Self Care skills. Even in Adaptive Behavior, scores below 70 suggest challenges in daily living. T2 page 71-72.
14. [REDACTED] administered the Kaufman Assessment Battery for Children when [REDACTED] was 3 years of age. [REDACTED] had a standard score of 58 and a motor skills score of 63. [REDACTED] had a

- social domain score of 57, Communication score of 50 and a daily living score of 77. [REDACTED] was diagnosed with Pervasive Developmental Disorder and later with autism. T2 page 77-79. Due to [REDACTED] young age of 3, the [REDACTED] assessment is of mild retardation with directive to better access in 1 to 2 years. [REDACTED] explains and agrees with [REDACTED] assessment. At age 3, cognitive scores are not reliable. P6, page 9, T2 pages 78-80. DDS Murphy agrees that IQ test for a 3 year old is not reliable. T2 page 217-225.
15. In 2006, [REDACTED] evaluated [REDACTED] at age 3 years and 5 months old. P7. [REDACTED] was evaluated using the Vineland Adaptive Behavior Scales, Interview Edition. [REDACTED] scores were as follows: Communication 57 Daily Living Skills 60 Socialization 59 Motor Skills 67 Motor Skills Composite 56. P7 page 2. They concluded that [REDACTED] developmental deficits qualifies him with a diagnosis of autism. P7 page 6.
 16. [REDACTED] did a neuropsychological evaluation of [REDACTED] when he was 5 years, 5 month old. P 8. They administered the Wechsler Preschool and Primary Scale of Intelligence, Third Edition. [REDACTED] full-scale IQ is 73, Language is 64 and Processing Speed 75 General Language 81 nonverbal abilities 88. T2 page 84. The Vineland Adaptive Behavior Scales was also administered, and [REDACTED] composite score was 76, motor skills 81. P8 page 22. While [REDACTED] has cognitive weaknesses he was diagnosed with autism spectrum disorder. T2 pages 82-89. T2 page 221-226, T3 240-242.
 17. [REDACTED] performed a neurological examination of [REDACTED] in May of 2011. [REDACTED] IQ score was 53 when he was 9 years of age. His verbal comprehension, working memory, and processing speed, all of those scores were below 69. However, his perceptual reasoning score was 82. This means [REDACTED] can match colors, shapes and sorting in a nonverbal way. T2 pages 94-99.
 18. In 2015, when [REDACTED] was 13 they did a reevaluation using Wechsler Intelligence Scale for Children, Forth Edition. Similar to the last evaluation, Verbal Communication, Working Memory and Processing Speed were all under 69, however, his non-verbal reasoning skill was 75. Finding intellectual disability you need both the cognitive and the adaptive scores. T2 pages 99-103. The Wechsler scale relies so heavily on verbal skills you cannot decipher whether the test results are rating [REDACTED] verbal skills vs his cognitive skills. T3 page 250.
 19. In 2015 [REDACTED] School did a psychoeducational report on [REDACTED] at age 13. This included a Comprehensive test of non-verbal intelligence. [REDACTED] scores a 74 full schale but his pictorial scale is a 64. His geometric score was 91. T3 page 254. [REDACTED] perceptual reasoning is significantly higher than his other score reflecting scattering of scores. T2 page 159-178. T3 page 257.

20. After examination of all the test of [REDACTED] [REDACTED] concludes that [REDACTED] cognitive and adaptive scores were sufficient to diagnose developmental disability and autism during the developmental period. T2 page 183. DDS Murphy departs from the [REDACTED] conclusion in that she indicates that:

Significant limitations in intellectual functioning existing concurrently with deficits in adaptive behavior that originated during the developmental period before the age of 18.

21. T2 page 205(emphasis added). Dr. Murphy argues that [REDACTED] adaptive scores keeps [REDACTED] from qualifying as intellectually disabled under the DDS statutory guidelines. Murphy explains that "existing concurrently" means that Adaptive Scales and Cognitive Scales must both be below 69 IQ, and subaverage for Adaptive skills at the same time. T2 pages 71, 72 and 207. T3 pages 391 to 394. In 2018 when [REDACTED] was in the 10th grade the [REDACTED] School administered the Wechsler Adult Intelligence Scale, 4th Edition. [REDACTED] scored 70 in Verbal Comprehension, Perceptual Reasoning 88, Working Memory 83, Processing Speed 59, and a full-scale score of 71. P12 page 3, T3 page 265. The concerning item here is the 29 point variability in the index scores(88-59=29). The variance makes one question whether the full scale score can be accurate. T3 page 265-266, 293.
22. The [REDACTED] School also completed the Third Edition Adaptive Behavior Assessment with [REDACTED] His adaptive skill tested higher than one deemed intellectually disabled. His score came in at 85 with index scores between 78 and 89. T3 page 266-267. P12 page 6. All scores from [REDACTED] psychoanalysis examinations are considered before the age 18. T3 page 298. [REDACTED] adaptive scores alone keep him from meeting the threshold required by Connecticut General Statute 1-61. T2 page 208, T3 page 330-335.

"Intellectual disability" defined

- (a) Except as otherwise provided by statute, "intellectual disability" means a significant limitation in intellectual functioning existing concurrently with deficits in adaptive behavior that originated during the developmental period before eighteen years of age.

(b) As used in subsection (a) of this section, "significant limitation in intellectual functioning" means an intelligence quotient more than two standard deviations below the mean as measured by tests of general intellectual functioning that are individualized, standardized and clinically and culturally appropriate to the individual; and "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group as measured by tests that are individualized, standardized and clinically and culturally appropriate to the individual.

In *Christopher v. Department of Mental Retardation* (277 Conn. 594, Conn 2006) the Supreme Court ruled on a case involving I Q scores above and below the 69 defined as mental retardation or intellectual disability. The Court supports DDS consideration of multiple test and other considerations as it says:

Finally, we note that we do not question that the plaintiff has needs that could be served by the department and that even his 1997 WISC-III test indicates borderline intelligence. The legislature, however, delegated to the defendant a gatekeeping function through his authority to determine eligibility. In close cases like the present one, the defendant and the department's expert staff are better qualified than a court to evaluate conflicting evidence to determine whether that threshold has been met. Accordingly, we conclude that the defendant's decision was supported by substantial evidence in the record.

Christopher v. Department of Mental Retardation (277 Conn. 594, page 445 Conn 2006)

Discussion

1. The Petitioner has the burden of proving that DDS was incorrect in denying [REDACTED] DDS services as an intellectually disabled person. Dr. [REDACTED] and Dr. Murphy agreed that the IQ score of 58 when [REDACTED] was just 3 years old was not a finite indicator of [REDACTED] abilities. He was too young and the IQ assessments are more definitive when the child reaches 8 years of age.
2. While the [REDACTED] Public Schools were charged with identifying just one disability from a list between 13 and 17; they uniformly identified "Autism" as [REDACTED] disability in his IEPs. This identification meant that his plan of care and education was designed to address learning and socialization skills impacted by his Autism. [REDACTED] cognitive issues and language delays exempted him from the 10th grade normal assessment exams.
3. When [REDACTED] was 5 years and 5 months old, He had a full-scale IQ of 73. The Wechsler Preschool and Primary Scale of Intelligence, Third Edition was administered by [REDACTED] At 9

years of age, [REDACTED] was assessed by [REDACTED] and his IQ score was 53. Yet, his perceptual reasoning score was 82. [REDACTED] was reassessed when he was 13 years of age in 2015. They used the Wechsler Intelligence Scale for Children, Fourth Edition. While [REDACTED] processing speed score was 69, his non-verbal reasoning skill was 75.

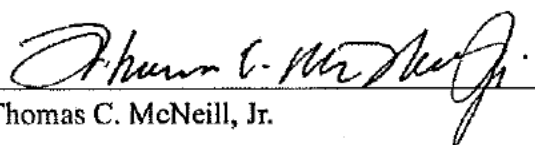
4. This scattering of scores for [REDACTED] gives one pause as the test could be measuring his verbal skill as opposed to his cognitive skills. Due to the wide swing in scores one is encouraged, according to both Psychologist witnesses here, to look at [REDACTED] Adaptive scores. The Adaptive scores incorporate [REDACTED] activities of daily living.
5. While [REDACTED] concluded that [REDACTED] is diagnosed with Autism and Developmental Disability he shies away from confronting the notion that [REDACTED] cognitive functions and Adaptive functions must both be below the 69 threshold to qualify for the Developmental Disability Services offered by DDS. The threshold scores both cognitive and adaptive must be below the norm "existing concurrently". Here is where Dr. Murphy's point remains salient. While [REDACTED] cognitive IQ scores were below 69 his adaptive scores were higher in most cases. The [REDACTED] School applied the Third Edition Adaptive Behavior Assessment of [REDACTED] His score came in at 85 with index scores between 78 and 89. T2 pages 71 and 72.

Conclusion

Petitioner did not meet the burden necessary to overturn the DDS determination that Petitioner is not eligible for services as Intellectually Disabled.

Hearing Officer

Date


Thomas C. McNeill, Jr.

3-3-2025

Exhibits

HO-1

Denial of Eligibility Dated 5/9/2019

HO-2

Request of Hearing

HO-3

Notice of Hearing Dated 2/15/2023

HO-4

Notice of Hearing Dated 5/6/2024

HO-5

Notice of Hearing Dated 9/9/2024

HO-6

HO-7

HO-8

HO-9

HO-10

DDS Exhibits

Description

Admitted/ID

DDS 1

DDS Autism Spectrum Letter

DDS-2

Denial of Eligibility Dated 5/9/2019

DDS-3

Proposed Decision 1/6/2020

DDS-4

Final Decision 2/6/2020

DDS-5

DDS 7-Testing Examinees with Special Needs

P-1

DDS Denial of Eligibility Letter (Dr. Kathleen J. Murphy) (May 9, 2019)

P-2

Second Review of Denial of Eligibility (Dr. Michael J. Hanley) (May 8, 2019)

P-3

Letter from Mrs. [REDACTED] to Commissioner Jordan Scheff (February 7, 2020)

P-4

Letter from Mrs. [REDACTED] to Dr. Kathleen Murphy (November 18, 2021)

P-5

Hearing Request September 28, 2022

P-6

Neurodevelopmental Evaluation () (September 2004)

P-7

Developmental Evaluation () LCSW (November 2004)

P-8

Neuropsychological Evaluation () (November 2006)

P-9

Neuropsychological Evaluation () (May 2011)

P-10

Schools Psychoeducational Evaluation () (January 2015)

P-11

Schools Speech-Language Re-Evaluation () S. CCC-SLP (February 23, 2018)

P-12

School Psychoeducational Evaluation () (March 2, 2018)

P-13

Educational Testing and Consulting Psychological Evaluation () (November 5, 2021)

P-14

IEP (June 13, 2016)

P-15

EP (April 18, 2017))

P-16

IEP (March 28, 2018)

P-17

IEP (March 20, 2019))

P-18

Creative Solutions for All Abilities Report by M.Ed, BCCS (March 10, 2023)

P-19

Letter from (March 17, 2023)

P-20

Letter from ABA Paraprofessional (August 20, 2024)

P-21

American Psychiatric Association -Intellectual Disability Fact Sheet

P-22

DSM-V Definition of Intellectual Disability

P-23

Pediatrics 10/15/2024

P-24

PC-360 Appointment of Conservator

P-25

PC-362 Appointment of Conservator

P26-CT Alternate Assessment Eligibility State Dept Education Presentation.pdf

P27-CT Alternate Assessment Eligibility Form.pdf

P28-CT IEP Manual - CT State Department of Education.pdf

P29- [REDACTED] Petitioner plus Proposed Exhibits\Education Act Federal Section 1111.pdf

P30-Petitioner plus Proposed Exhibits\Sec. 300.160 Participation in assessments - Individuals with Disabilities Edu