



State of Connecticut
Department of Developmental Services

DDS

Ned Lamont
Governor

Jordan A. Scheff
Commissioner

Peter Mason
Deputy Commissioner

Certified Mail [REDACTED] and First Class U.S. Mail and email [REDACTED]

November 12, 2021

[REDACTED]

RE: Final Decision

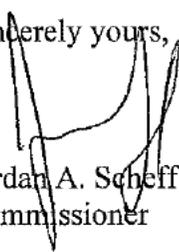
Dear [REDACTED]

On October 19, 2021 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. To date no comments have been received.

After reviewing the proposed decision and the record, including exhibits submitted at the hearing, I concur with the hearing officer, adopt the Proposed Decision as the Final Decision and find that [REDACTED] **is not eligible** for services of the Department of Developmental Services pursuant to Connecticut General Statute section 1-1g. DDS is not stating that [REDACTED] does not need and will not need assistance with his life plans, but that he does not meet the statutory criteria that we are required to follow.

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 Superior Court. Such appeal must be submitted within forty-five (45) days of the mailing of this final decision.

Sincerely yours,


Jordan A. Scheff
Commissioner

Enclosure

Cc: Helen Apostolidis, Hearing Officer
Kathleen Murphy, Ph.D., Director, Eligibility Unit
MJ McCarthy, Director, Legal & Government Affairs
Marjorie Wakeman, Assistant Director, Legal & Government Affairs

STATE OF CONNECTICUT
DEPARTMENT OF DEVELOPMENTAL SERVICES
PROPOSED MEMORANDUM OF DECISION

ELIGIBILITY

IN RE: [REDACTED]

October 6, 2021

Introduction

On September 24, 2021, a hearing was conducted remotely via Microsoft Teams to determine the eligibility of Petitioner [REDACTED] for services from DDS pursuant to Connecticut General Statutes Section 1-1g. The Request for Hearing was filed by the Petitioner on July 27, 2021.

The following individuals were present at the hearing:

[REDACTED]	Petitioner
[REDACTED]	Mother
[REDACTED]	Coordinator, [REDACTED] Public Schools
Dr. Kathleen Murphy	DDS Psychologist/Director, Eligibility Unit

The following exhibits were entered into evidence:

Hearing Officer 1	Denial of Eligibility Letter 6/1/2021
Hearing Officer 2	Request for Hearing 7/27/2021
Hearing Officer 3	Acknowledgment letter 8/12/2021
Hearing Officer 4	Notice of Hearing 9/2/2021
Hearing Officer 5	DDS Assessment Team Report ¹

DDS 1	DDS Application 4/26/2021
DDS 2	Denial of Eligibility letter 6/1/2021
DDS 3	Psychoeducational Re-Evaluation [REDACTED]
DDS 4	Comprehensive Evaluation October [REDACTED]
DDS 5	[REDACTED] IEP

Petitioner 1	Decree/Appointment of Guardian of Person with Intellectual Disability dated 7/15/2021
Petitioner 2	Psychoeducational Re-Evaluation [REDACTED]

¹ Hearing Officer Exhibits 1-4 were identified and admitted at the hearing. In light of evidence adduced at the hearing, DDS was requested to produce documentation regarding the Assessment Team report to the probate court, and the hearing record remained open until October 8, 2021, for such purpose. The submitted report was admitted as Hearing Officer Exhibit 5.

Petitioner 3	Student Educational Evaluation [REDACTED]
Petitioner 4	Comprehensive Evaluation [REDACTED]
Petitioner 5	Academic File Review
Petitioner 6	Summary of Performance completed [REDACTED]
Petitioner 7	[REDACTED] IEP
Petitioner 8	5/11/2021 letter to Judge [REDACTED] from [REDACTED], Transition Coordinator
Petitioner 9	Health and School Checklist
Petitioner 10	Immunization Summary/Medical Evaluation [REDACTED]
Petitioner 11	Aging and Disability Services – Level Up Student Referral

Statement of the Issue:

Is [REDACTED] eligible for DDS services pursuant to Connecticut General Statutes Section 1-1g?

Findings of Fact:

1. [REDACTED] lives in [REDACTED], Connecticut. His date of birth is [REDACTED] (Exhibit DDS 1; testimony of [REDACTED]).
2. In [REDACTED] when [REDACTED] was [REDACTED] years old and attending the [REDACTED] grade, the [REDACTED] completed a psychoeducational re-evaluation as part of the triennial review for special education services. (Exhibit DDS 3; Exhibit Petitioner 2; testimony of Dr. Kathleen Murphy).
 - a. The evaluators noted that [REDACTED] prior records reflected the results of a psychoeducational evaluation conducted by the [REDACTED] School District in [REDACTED] when he was [REDACTED] years old and attending the [REDACTED] grade:
 - 1) On the Wechsler Intelligence Scale for Children-4th Edition (WISC-IV), a Verbal Comprehension Index Score of 69; a Perceptual Reasoning Index Score of 75; a Working Memory Index Score of 62; a Processing Speed Index Score of 59; and a Full-Scale IQ Score of 60. (Exhibit DDS 3; Exhibit Petitioner 2).
 - 2) On the Adaptive Behavior Assessment System – Second Edition (ABAS-2), a General Adaptive Composite score of 44. (Exhibit DDS 3; Exhibit Petitioner 2).
 - b. On the Wechsler Adult Intelligence Scales – Fourth Edition (WAIS-IV) [REDACTED] obtained a Verbal Comprehension Index Score of 76; a non-interpretable Perceptual Reasoning Index Score; a Working Memory Index Score of 83; a Processing Speed Index Score of 71; and a Full-Scale IQ Score of 75. (Exhibit DDS 3; Exhibit Petitioner 2; testimony of Dr. Kathleen Murphy).

- c. On the Adaptive Behavior Assessment System – Third Edition (ABAS-3) [REDACTED] was given General Adaptive Composite scores of 83 by his teacher and 64 by his mother. (Exhibit DDS 3; Exhibit Petitioner 2; testimony of Dr. Kathleen Murphy).
3. In [REDACTED] [REDACTED] completed a comprehensive evaluation. (Exhibit DDS 4; Exhibit Petitioner 4; testimony of Dr. Kathleen Murphy).
 - a. On the Wechsler Intelligence Scale for Children-5th Edition (WISC-V) [REDACTED] earned a Verbal Comprehension Index Score of 78; a Visual Spatial Index Score of 75; a Fluid Reasoning Index Score of 94; a Working Memory Index Score of 79; a Processing Speed Index Score of 66; and a Full-Scale IQ Score of 75. (Exhibit DDS 4; Exhibit Petitioner 4; testimony of Dr. Kathleen Murphy).
 - b. On the Vineland Adaptive Behavior Scales – Second Edition (Vineland-2) [REDACTED] was given a Behavior Composite score of 61 by his mother. (Exhibit DDS 4; Exhibit Petitioner 4; testimony of Dr. Kathleen Murphy).
4. The preponderance of evidence produced at the hearing established that [REDACTED] does not have a significant limitation in intellectual functioning existing concurrently with deficits in adaptive behavior which originated during the developmental period, so as to qualify for DDS services as intellectually disabled. The most recent tests of [REDACTED] intellectual functioning reflect scores above the intellectually disabled range as defined in C.G.S. 1-1g.
5. DDS denied Petitioner’s application for eligibility on June 1, 2021. (Exhibit HO 1; Exhibit DDS 2).
6. On or about May 2021 Petitioner’s mother applied for guardianship of her son. (Exhibit Petitioner 8; Exhibit HO 5).
7. By letter dated May 11, 2021 [REDACTED], the Transition Coordinator for [REDACTED] Public Schools, informed the [REDACTED] Probate Court Judge that Petitioner was a student with an IEP, with the exceptionality of Learning Disabilities, and that he was given The Wechsler Intelligent Scale [sic] 4th Edition which yielded a Full-Scale IQ Score of 60. (Exhibit Petitioner 8).
8. On June 8, 2021 a DDS Assessment Team evaluated Petitioner and thereafter submitted its report to the [REDACTED] Probate Court. (Exhibit HO 5).
 - a. The Assessment Team did not report on whether or not Petitioner is a person with an intellectual disability. (Exhibit HO 5).
 - b. The Assessment Team reported that Petitioner was being evaluated for eligibility by DDS. (Exhibit HO 5).

- c. The Assessment Team reported that Petitioner is not functioning adaptively and intellectually within the severe or profound range of intellectual disability. (Exhibit HO 5).
 - d. The Assessment Team recommended guardianship for Petitioner. (Exhibit HO 5).
9. On July 15, 2021 the [REDACTED] Probate Court, after hearing, issued a Decree of Appointment of Guardian of Person with Intellectual Disability, appointing [REDACTED] mother as Plenary Guardian. (Exhibit Petitioner 1).
- a. The Court found by clear and convincing evidence that the respondent ([REDACTED] [REDACTED]) has an intellectual disability as defined in C.G.S. Section 1-1g, and that by reason of the severity of his or her intellectual disability is totally unable to meet essential requirements for his or her physical health and safety and is totally unable to make informed decisions about matters related to his or her care. (Exhibit Petitioner 1).
 - b. The Court did not make any other written findings of fact. (Exhibit Petitioner 1).
10. Petitioner requested a hearing to challenge DDS' denial on July 27, 2021. (Exhibit HO 2).

Definitions:

Connecticut General Statutes Section 1-1g defines those who are eligible for DDS services as those with:

[A] significant limitation in intellectual functioning and deficits in adaptive behavior that originated during the developmental period before eighteen years of age. . . . "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. . . .

An intelligence quotient more than two standard deviations below the mean means an IQ score of 69 or less. Christopher R v. Commissioner, 277 Conn. 594, 616 (2006).

The Petitioner has the burden to prove that he meets the eligibility criteria for DDS services. Id.

Discussion:

In order to meet the qualifications for Intellectual Disability under Section 1-1g of the Connecticut General Statutes, Petitioner must prove by a preponderance of the evidence that he experiences a significant limitation in both intellectual functioning and adaptive behavior that originated during the developmental period.

Implicit in the use of the present tense “existing” in Section 1-1g is the requirement that Petitioner presently experience such concurrent limitations – having had cognitive and adaptive test results more than two standard deviations below the mean at one point during the developmental period is not sufficient.

In the present case Petitioner’s most recent Full-Scale IQ Scores of 75, at the age of [REDACTED] (Petitioner is now [REDACTED] years old) are above the intellectually disabled range, and he is thus not a person with an intellectual disability as defined in Section 1-1g.²

Conclusion:

[REDACTED] is not eligible for DDS services as an individual with an intellectual disability.



Helen Apostolidis
Hearing Officer

² The [REDACTED] Probate Court did find that Petitioner has an intellectual disability as defined in Section 1-1g. As it did not make particular findings of fact, it is not clear what evidence of individualized, standardized and clinically and culturally appropriate tests the Court had before it and considered, nor is the basis of its conclusion evident. There is evidence that the Court was presented with Petitioner’s Full-Scale IQ Score of 60 (see Exhibit Petitioner 8). [REDACTED] letter, written in 2021 and referring to Petitioner’s current programming and exceptionality, suggests that the Full-Scale IQ Score of 60 is also current, or at least recent. [REDACTED] does not disclose that the score was from [REDACTED] from a school district in [REDACTED] nor that there are other, more recent test results. It does not appear that the DDS Assessment Team provided the Court with the more recent [REDACTED] Public Schools evaluation – only a reference to its existence appears on the team’s report (Exhibit HO 5). It is thus possible that the Court relied solely on the [REDACTED] test score, and assumed that it was from the [REDACTED] Public Schools evaluation which was referenced in the DDS Assessment Team’s report. In any event, and particularly under these circumstances, the [REDACTED] Probate Court decree is not binding here.

During the 2016 legislative session, SB 143, which would have obligated each state agency to recognize, apply and enforce any order, denial or decree of a Probate Court that is applicable to any determination made by that state agency in a contested case, was considered, but did not become law.