



Policy for eligibility appeals in respect of intellectual disability and autism spectrum disorder

1. Keywords

Eligibility; intellectual disability; autism spectrum disorder.

2. Policy statement

This document sets out the policy and procedure applying to the review¹ of eligibility decisions made by the Principal Eligibility Officer (PEO) of the Disability Services Commission (the Commission) in respect of intellectual disability and autism spectrum disorder (ASD).

Persons dissatisfied with **diagnostic** decisions concerning autism spectrum disorder and intellectual disability made by assessors external to the Commission eligibility processes will be referred to those assessors.

3. Principles

The principle that a decision is suitable for review on its merits, if the interests of a person will be, or are likely to be affected by that decision, is well established in administrative law.

The Commission acknowledges this principle and those of natural justice and stipulates that an eligibility appeals process should be further underpinned by the following principles.

- 3.1 The appeals process will be transparent. Information about the eligibility appeals process will be made available through an information brochure which will be sent with the letter advising that the referral has not been assessed eligible. This information will be provided to those referred to the Commission for an eligibility decision as well as the person/agency making the referral.

¹ An eligibility appeal will, in the first instance, review conformity with the eligibility determination process used to decide eligibility status. In these cases, an appeals decision that finds that the eligibility determination process was not followed correctly will result in the original eligibility decision being set aside and a new eligibility determination undertaken.

It is anticipated that some appeals will deal with the eligibility determination itself. These appeals will require the Appeals Panel to establish that the eligibility decision itself was incorrect.

- 3.2 An appeal in respect of an eligibility decision will be dealt with by officers of the Commission (and/or others) not involved in the original eligibility decision.
- 3.3 The appeal decision will be based on clinical evaluation of the diagnostic evidence presented. The decision arising from an eligibility appeal will be accompanied by an explanation as to how it was reached.
- 3.4 The appeal decision will be timely and will meet agreed timeline benchmarks.
- 3.5 The appeals process will incorporate a review methodology that can be tested for its reliability and be one that can be replicated.
- 3.6 An appeal will be evidence based. The potential appellant will advise which of the following appeal criterion has not been met and the Appeals Panel will examine the relevant material to determine that either:
 - 3.6.1 the process undertaken to determine eligibility was not complied with in some significant way
 - 3.6.2 the eligibility decision itself resulted from an error of judgement, for example, in reaching a decision, critical information was not given due weight or was not taken into account at all
 - 3.6.3 new evidence/information² not considered during the original eligibility determination is available that would have influenced the outcome of the original determination³.

4. Definitions

- 4.1 Eligibility, in terms of this policy, refers to the status given to an individual in respect to eligibility for Commission funded⁴ and provided services.
- 4.2 Intellectual disability, in terms of this policy, refers to the disability as defined by internationally recognised criteria for intellectual disability⁵, in that to be eligible for Commission services available to people with an intellectual disability a person must have: significantly below average intellectual functioning; significantly below average adaptive behaviour; and the condition manifested prior to 18 years of age. In addition, the person's test results and clinical presentation must be consistent with an intellectual disability and not be better explained by other factors, such as mental health issues or personality disorder.

2 New information will usually be dealt with via the Re-referral process. It is incumbent on the appellant to ensure all relevant information is available at the time of assessment.

3 This can include a request from service providers for a review of the original eligibility decision based on evidence that an individual deemed eligible is functioning at a higher level than the eligibility criteria would suggest.

4 It is noted that no other funded service is currently covered by an appeal process.

5 Drawn from the American Association of Intellectual and Developmental Disability (2010).

4.3 Autism spectrum disorder, in terms of this policy, refers to the diagnosis of ASD incorporating the criteria for autism, Aspergers, childhood disintegrative disorder or pervasive developmental disorder not otherwise specified (including atypical autism) specified in the current version of the Diagnostic and Statistical Manual of Mental Disorder (DSM IV – TR).

4.3.1 People assessed to have an autism spectrum disorder and intellectual disability or, in the case of a pre-school age child, an autism spectrum disorder and an assessed vulnerability to intellectual disability are eligible for Commission provided services.

4.3.2 The condition will have manifested in childhood and prior to the person's 18th birthday.

4.3.3 The person must be a permanent Australian resident and reside permanently in Western Australia.

(i) Legally entitled to permanently reside in Australia

Persons who are legally entitled to permanently reside in Australia include:

- an Australian citizen
- the holder of a permanent visa
- a holder of a special category visa subclass 444 (for New Zealand citizens).

If an applicant does not fall into one of the above categories but asserts an entitlement to permanently reside in Australia under a different visa category, the application should be referred to the Commission for a case-by-case determination.

and

(ii) Permanently resides in Western Australia

This requirement excludes from eligibility persons who do not permanently reside in Western Australia. Examples of persons not eligible are a tourist visiting from another State/Territory or country, or a person who is residing temporarily in Western Australia on a short-term work contract but who intends to return to live in another State or country.

4.4 Vulnerable to intellectual disability, in terms of this policy, applies to pre-school children whose assessment results measured on a suitable developmental or intellectual assessment scale are two standard deviations below the mean, or where there is clear clinical evidence⁶ or observation that the child's functioning is significantly delayed.

4.5 Principal Eligibility Officer (PEO), refers to the Commission officer whose role it is to examine the information provided for each referral for eligibility determination in respect of intellectual disability and ASD, and make a decision regarding eligibility for Commission funded and/or provided services.

6 For example evidence of Rett's Disorder or Down Syndrome.

5. Eligibility determination

5.1 Determination process

5.1.1 A decision on the eligibility status of a referral is made by the PEO who examines the information provided for each referral. For eligibility for Commission funded and/or provided services based on an intellectual disability, the information is examined in relation to IQ assessment being within the accepted range, adaptive behaviour assessment being within the accepted range and onset having occurred prior to the age of eighteen years.

The PEO also carefully examines clinical factors that may account for depressed IQ or adaptive functioning scores. For example:

- a child with a language problem is likely to score lower on some verbal subtests
- a child with dyspraxia⁷ is likely to score lower on some performance subtests
- a child with Attention Deficit Hyperactivity Disorder may have depressed scores because of difficulties in focusing his/her attention
- teenage and adult test scores can be affected through depression or other mental health problems.

5.1.2 For eligibility for Commission funded and/or provided services based on a diagnosis of autism spectrum disorder, the PEO examines the referral information to ensure that the requisite number and type of DSM IV-TR criteria have been met to secure an ASD diagnosis, and that the ratings on any of the criteria are not explained by another disorder⁸.

5.2 Establishment of peer review/quality assurance for eligibility determination

Reliability and quality benchmarks for eligibility determinations will be established by a process of peer review/quality assurance, as follows.

5.2.1 The PEO will consult the Commission's Medical Officer (MO) in the case of referrals involving people who have medical conditions which may impact on their functioning. Discussion between the PEO and MO will clarify (to the degree possible) the likely impact of any medical condition on eligibility determination.

7 Clumsiness and lack of coordination is typical for children with this disorder. It may affect block design and other performance subtests.

8 For example, childhood depression.

- 5.2.2 Where an individual has assessment results indicative of an intellectual disability, but the PEO is unsure whether clinical factors influence these results, a second opinion will be sought from one of the clinical psychologists from Statewide Specialist Services. The eligibility determination will be made following joint consideration of the evident clinical factors.
- 5.2.3 Where formal speech and psychology assessment results are required in order to make an eligibility determination, but have not been provided, the PEO may request diagnostic assessments for intellectual disability and ASD from relevant professional staff of the Commission. These requests will be forwarded to the relevant Manager in Statewide Specialist Services for allocation to appropriate professional staff.
- 5.2.4 Eligibility Determination Reference Panel. The establishment of a reference panel of professional peers (which meets on a quarterly basis, facilitated by the PEO) will provide the professional staff of the Commission and those working within external service providers (should they choose to participate) with the opportunity to meet and discuss issues of joint concern and changes to diagnostic processes that impact on eligibility determinations. This group of professionals, as a group or as individuals, will provide a 'sounding board' and quality assurance function for the PEO in matters related to eligibility issues.

6. Eligibility appeals procedure

- 6.1 Within four weeks of being advised of an individual's/family's/service provider's wish to question the outcome of an eligibility decision, the PEO will prepare a detailed report in respect of the decision, providing information on the reasons for the eligibility decision and the process through which it was reached.

The report will be made available to the individual/family/service provider. A letter sent with the report will invite contact with either the PEO for assistance in understanding technical aspects of the report, or the Consumer Liaison Officer (CLO) for assistance in accessing the appeals process.

- 6.2 Upon ascertaining which appeal criterion the individual/family/service provider wishes to appeal, a formal application is completed and returned to the CLO. This may occur at the initial meeting with the CLO, or it may be posted subsequently. On receipt of the appeal application, the CLO will refer to the Manager, Statewide Resource and Consultancy who will convene the Appeals Panel comprising a senior psychologist and senior speech pathologist drawn from Commission professional staff familiar with the eligibility determination process⁹. In the case of ASD a medical officer may be consulted if deemed appropriate. The Appeals Panel is to be chaired by a Commission Executive Director, Director or Senior Manager not involved in the original eligibility determination. The Chairperson must have knowledge of intellectual functioning and autism spectrum disorder assessments. The Appeals Panel will examine the necessary file documentation and any new material that has been

⁹ The Appeals Panel may consult and seek opinion from other professionals external to the Commission.

provided to establish whether or not there are grounds for a reassessment or a change to the original decision.

6.3 Terms of Reference. The Appeals Panel will determine if:

- 6.4.1 The process undertaken to determine eligibility was not complied with in some significant way.
- 6.4.2 The eligibility decision itself resulted from an error of judgement, for example, in reaching a decision, critical information was not given due weight or was not taken into account at all.
- 6.4.3 New evidence/information¹⁰ not considered during the original eligibility determination is available that would have influenced the outcome of the original determination¹¹.

6.4 Post appeal follow-up correspondence to be sent to the appellant individual/family/service provider outlining the Appeal decision and reason for the decision. Those receiving information of an unsuccessful appeal are to be advised of further avenues of complaint through the Health and Disability Services Complaints Office (HaDSCO)

7. Consultation

Consultation was carried out between Statewide Specialist Services, Local Area Coordination, Accommodation Services, and Policy and Strategy and amendments made to the policy in line with the constructive comments received.

8. Related policies

- 8.1 Guidelines – Eligibility Policy for Specialist Disability Services Funded or Provided by the Commission.
- 8.2 Service Access for Disability Professional Services Autism Early Intervention Providers.

9. Communication

The Eligibility appeals brochure is sent to all individuals who are deemed to be ineligible by the Commission's Eligibility Team. Communication of the Appeals Process to relevant Commission staff will be the responsibility of the Statewide Specialist Services.

10. Training

Commission-wide training is not applicable. Professional staff involved in the appeals process will require process orientation. Training will be provided by the PEO and Senior Managers from Statewide Specialist Services where required.

10 New information will usually be dealt with via the Re-referral process.

11 This can include a request from service providers for a review of the original eligibility decision based on evidence that an individual deemed eligible is functioning at a higher level than the eligibility criteria would suggest.

11. Evaluation and Review

The Policy for eligibility appeals in respect of intellectual disability and autism spectrum disorder will be reviewed in 2 years according to the process undertaken in relation to the Director General's Commission-wide policy tracking system.

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