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MEMORANDUM

TO: Central Office Leadership Team
DDSO Directors
DDSO Psychology Discipline Coordinators
Executive Directors of Provider Agencies
Executive Directors of Statewide Associations
Commissioner's Advisory Council Members

FROM: Thomas A. Maul
Commissioner

DATE: August 10, 2001

RE: OMRDD Advisory Guideline--Determining Eligibility for Services: Substantial Handicap and Developmental Disability

The attached advisory guideline addresses issues in determining eligibility for OMRDD services, regardless of whether these services are provided by OMRDD or by not-for-profit organizations. In particular, the advisory addresses the core concerns of how both substantial handicap and presence of developmental disability may be confirmed.

New York's developmental services system is one of the largest in the nation. It is also one of the few statewide systems in which determinations of eligibility are made at a district or regional level. Consequently, it is important that OMRDD be able to assure that determinations are made in a fair, equitable, and consistent manner across the state. These issues are addressed by the provisions in the advisory. The advisory was developed through review of current and typical practices across OMRDD's districts and regions, review and comment by DDSO Directors and Psychology Discipline Coordinators, and consensus among key OMRDD clinicians with responsibility for rendering determinations of eligibility across the state.

The advisory addressees a wide range of key concerns, which include:

1. Professional principles with respect to conditions other than mental retardation, the need for complete clinical information, the need for qualified assessors, the need to use prevailing diagnostic classifications, and the need to establish review procedures for decisions.
2. The use of adaptive behavior as a benchmark to establish functional limitations consistent with substantial handicap, assessment practices with respect to intellectual functioning and adaptive behavior, and the appropriateness of various psychometric assessment measures.
3. The establishment of substantial handicap among children and provisions for "provisional" eligibility for some children under selected circumstances, with an upper age limit of eight years for "provisional" eligibility.
4. Recommended DDSO processes, organized into several steps, for determining eligibility, and maintenance of records of assessments that contributed to eligibility determination decisions.
5. Illustration of issues, concerns, and diagnostic circumstances that may prompt second or third step reviews within recommended DDSO processes.

It is important to recognize that it is not intended that any provisions of this guideline be applied in any manner that diminishes responsible and responsive clinical practice. For example, as long as the required information can be obtained from an adaptive behavior measure, clinicians may choose to use different adaptive behavior measures to assess people with different characteristics, due to the greater clinical appropriateness of some measures for assessment with some individuals and not others. The primary intent of this advisory is to ensure consistency in local processes of decision making about eligibility and to promote the availability of clinical information sufficient in breadth and depth to permit fair, equitable, and suitably informed decisions to be made. It is also important to note that only authorized DDSO staff may determine eligibility for OMRDD services, regardless of what agency, provider, or practitioner will render the services.

The guidelines were developed by the Bureau of Planning and Service Design (BPSD). Inquiries regarding this advisory should be directed to Dr. Jill Pettinger, Chief Psychologist, Upstate Regional Office at (518-474-8652 or jill.pettinger@omr.state.ny.us).

OMRDD ADVISORY GUIDELINE

DETERMINING ELIGIBILITY FOR SERVICES: SUBSTANTIAL HANDICAP AND DEVELOPMENTAL DISABILITY

SCOPE OF ADVISORY

The primary purpose of this policy advisory is to establish fair and consistent criteria by which the presence of developmental disability or substantial handicap can be confirmed by a DDSO. This advisory requires DDSOs to adopt a several step process to promote equitable eligibility determinations across the state.

This document also clarifies clinical issues related to eligibility for OMRDD services in general, that is, services provided, certified, or funded by OMRDD. Establishing eligibility for specific programs and services is a different matter, which is undertaken after a judgment has been made that a person indeed has a substantial handicap that constitutes developmental disability. Confirming eligibility for specific programs and services involves additional criteria related to service need, present type of living situation, or other factors. These specific eligibility criteria are found in agency policy and regulations related to each particular service.

Reference to the contents of this Advisory will be especially useful when:

- ◆ Eligibility is sought due to mental retardation, but it is unclear whether the presence of mental retardation can be verified,
- ◆ Questions are raised about the presence of developmental disability based on conditions other than mental retardation,
- ◆ Historical clinical records and related materials have not been provided for review, or cannot be obtained for review, or
- ◆ Eligibility is sought for a child from birth to seven years of age, in which case eligibility may be determined provisionally, pending review and redetermination no later than age seven years.

CONTENTS

SECTION I	<i>DEFINITION OF DEVELOPMENTAL DISABILITY – FROM MENTAL HYGIENE LAW 1.03 (22)</i>	3
SECTION II	<i>PROFESSIONAL PRINCIPLES AND QUALIFIED PRACTITIONERS</i>	
	NEED TO ASSESS ELIGIBILITY FOR PEOPLE WITH CONDITIONS OTHER THAN MENTAL RETARDATION	4
	NEED FOR COMPLETE CLINICAL INFORMATION	5
	PRACTITIONERS QUALIFIED TO CONDUCT ASSESSMENTS	5
	NEED TO USE PREVAILING DIAGNOSTIC NOMENCLATURES	6
	NEED TO ESTABLISH REVIEW PROCEDURES	7
SECTION III	<i>FUNCTIONAL LIMITATIONS AND SUBSTANTIAL HANDICAP</i>	
	FRAMEWORKS FOR ADAPTIVE BEHAVIOR	8
	USING SCORES ON ADAPTIVE BEHAVIOR MEASURES TO ESTABLISH FUNCTIONAL LIMITATIONS	9
	ASSESSING INTELLECTUAL FUNCTIONING AND ADAPTIVE FUNCTIONING	10
	WHICH STANDARDIZED ASSESSMENT MEASURES ARE APPROPRIATE?	11
	ESTABLISHING SUBSTANTIAL HANDICAP FOR CHILDREN	13
SECTION IV	<i>GUIDELINES FOR DDSO PROCESSES</i>	
	STEP ONE	15
	STEP TWO	16
	STEP THREE	16
	PROVISIONAL ELIGIBILITY FOR CHILDREN AGES BIRTH TO SEVEN YEARS	17
	MAINTENANCE OF RECORDS	18
SECTION V	<i>FACTORS THAT PROMPT SECOND OR THIRD STEP REVIEWS</i>	
	FOURTEEN SPECIFIC EXAMPLES	19
SECTION VI	<i>REFERENCES</i>	23

SECTION I: DEFINITION

Section 1.03(22) of the New York State Mental Hygiene Law is the legal base for eligibility determination and defines Developmental Disability as:

A disability of a person that:

(a)(1) Is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment or autism;

(2) Is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons; or

(3) Is attributable to dyslexia resulting from a disability described in (1) or (2);

(b) Originates before such person attains age twenty-two;

(c) Has continued or can be expected to continue indefinitely; and

(d) Constitutes a substantial handicap to such person's ability to function normally in society.

SECTION II: PROFESSIONAL PRINCIPLES

One federal agency and several professional associations provide clarification and support for the interpretation of this section of the law. These are:

- ◆ Administration on Developmental Disabilities (ADD).
- ◆ American Association on Mental Retardation (AAMR).
- ◆ American Psychiatric Association (ApA).
- ◆ American Psychological Association (APA)

Please note that a determination of developmental disability under MHL 1.03 does not imply eligibility for all OMRDD services. There are additional and varying eligibility criteria for many of these services.

NEED TO ASSESS ELIGIBILITY FOR PEOPLE WITH CONDITIONS OTHER THAN MENTAL RETARDATION

MHL 1.03(22) addresses eligibility for services for people with mental retardation and people with other developmental disabilities who do not have mental retardation.

For other conditions named in MHL 1.03(22), such as autism, cerebral palsy, epilepsy, and neurological impairment (e.g., TBI), the diagnosis of the named condition, or a related condition as defined in 1.03(22)(a)(2) is required.

Also required are (1) Onset prior to age 22, (2) Likelihood of indefinite continuation, and (3) Presence of substantial handicap and functional limitations. **In combination, these factors will confirm eligibility for services.**

It is recognized that most cases do not present problems with regard to determination. Reference to the contents of this Advisory will be especially useful in the following cases:

- ◆ When IQ scores are close to but above 70 (e.g., on an instrument with SD = 15) if eligibility is sought due to mental retardation.

- ◆ When questions are raised about the presence of developmental disability based on conditions other than mental retardation.
- ◆ When clinical records and other historical materials have not been provided for review, or cannot be obtained for review.
- ◆ When there is a combination of these circumstances.

NEED FOR COMPLETE CLINICAL INFORMATION

Eligibility determinations should be made on the basis of complete clinical information. This includes information confirming or based upon:

- ◆ **History** and **presence** of developmental disability prior to the age of 22.
- ◆ **Standardized** intelligence testing as a component of comprehensive assessment of the clinical condition.
- ◆ **Standardized** measures of adaptive functioning that can detect substantial handicaps or functional limitations.

It is the responsibility of the referring party to provide or arrange for the provision of such information. DDSOs may choose to assist referring parties in securing such information.

PRACTITIONERS QUALIFIED TO CONDUCT ASSESSMENTS

Professionals who are “qualified practitioners” and who may **administer and interpret** standardized measures of intelligence and adaptive behavior are herein defined as:

Persons with **directly relevant** masters degree or doctoral level **education** in psychology, with **training and supervised experience** in the use and interpretation of such measures consistent with the recommendations contained in the respective test manuals for measures and with the **requirements of ERA/APA/NCME (1999) standards** for test administration and use and interpretation of individual test results.

Qualified practitioners are expected to exercise informed clinical judgment in appraising information obtained by the use of psychometric and other measures. They are expected to be cognizant of such considerations as:

- ◆ The standard error of measurement and standard error of the mean.
- ◆ Factors that increase or decrease the validity of assessment results.
- ◆ Exploration of relevant clinical history and related information.

These factors must be considered in deciding whether criteria for intellectual or adaptive behavioral functioning are met by the test scores, or whether a substantial handicap is present.

When warranted, qualified practitioners are encouraged to perform differential diagnostic assessments rather than exclusively ruling in or ruling out specific conditions. Such assessments may include testing limits or identifying characteristic discrepancies between skill and performance measures.

In cases where no information is available regarding age of onset of disability during the developmental period (e.g., for someone now in her 50s), DDSOs are advised to rely on the clinical judgment of appropriately licensed or certified professionals. These judgments should be based on the best available and obtainable information.

NEED TO USE PREVAILING DIAGNOSTIC NOMENCLATURES

It is expected that practitioners will designate diagnostic classifications in correspondence with the prevailing clinical nomenclatures (e.g., ICD-9, DSM-IV, APA).

For example, the diagnosis of mental retardation cannot be rendered, according to the present nomenclatures, without a determination of concurrent adaptive or functional limitations and age of onset, as well as significant deficits, delays, or limitations in general intellectual functioning.

Similarly, there are specific diagnostic criteria for other conditions such as autistic disorder or pervasive developmental disorder-not otherwise specified, which may result in eligibility for services in the absence of mental retardation.

OMRDD will scrutinize diagnostic statements made that are not supported by corresponding **and appropriate** clinical and psychometric assessment findings. This scrutiny will occur regardless of whether eligibility is sought based on the presence of mental retardation or of another developmental disability.

NEED TO ESTABLISH REVIEW PROCEDURES

Each DDSO will establish assessment and review procedures to determine the presence of a developmental disability or a substantial handicap (see page 15). Such procedures will be designed to provide equitable assessments of similar groups of people and fair and objective review of cases where presence of substantial handicap is difficult to determine.

SECTION III: *FUNCTIONAL LIMITATIONS AND SUBSTANTIAL HANDICAP*

Functional limitations are generally considered to constitute a substantial handicap when they **prohibit a person from being able to engage in self-care or exercise self-direction independently or when development of self-care and self-direction skills are significantly below an age-appropriate level.** Such limitations may also seriously disrupt age-appropriate social and interpersonal relationships. The clinical determination of when a condition constitutes a substantial handicap is complex and involves numerous factors.

Functional limitations constituting a substantial handicap are herein defined as: significant limitations in adaptive functioning that are determined from the findings of assessment by using a nationally normed and validated, comprehensive, individual measure of adaptive behavior, administered by a qualified practitioner.

Onset of significant limitations in adaptive behavior constituting substantial handicap, as defined below, must be before the person attains age 22 in order to satisfy the requirements of MHL 1.03(22)(b). Onset must be verified as entailing occurrence of significant limitations in adaptive behavior prior to age 22.

FRAMEWORKS FOR ADAPTIVE BEHAVIOR

The two sets of domains below each include areas of practical abilities, social competence, and performance in everyday life. These domains constitute two possible frameworks for describing adaptive behaviors. People may be fairly judged within the context of these elements.

The federal definition of developmental disability promulgated by the federal Administration on Developmental Disabilities mentions **seven domains of life activity:** language, learning, mobility, self-care, capacity for independent living, self-direction, and economic self-sufficiency. This framework applies to services funded through federal Developmental Disabilities Planning Council funds.

The Fourth Edition of the American Psychiatric Association's Diagnostic and Statistical Manual **includes additional aspects of life activity as domains,** such as: communication, self-care, home living, social and interpersonal skills, use of

community resources, self-direction, functional academic skills, work, leisure, health, and safety. This framework corresponds to the domains set forth by the American Association on Mental Retardation.

Clinicians are advised to use a framework in characterizing adaptive behavior that is comprehensive, that adequately reflects personal and social skills, and that is relevant throughout a person's life span. Generally, adaptive behavior scales are based on these kinds of frameworks. However, New York State law or regulation **does not require that either of the groupings of domains above be used** for assessing adaptive behavior.

USING SCORES ON ADAPTIVE BEHAVIOR MEASURES TO ESTABLISH FUNCTIONAL LIMITATIONS

For adaptive behavior measures **that provide an overall composite or summary index score**, the criterion of significance for defining substantial handicap is an overall **composite or summary index score** that is **2.0** or more standard deviations below the mean for the appropriate norming sample, or that is within the range of adaptive behavior associated with an intellectual level consistent with mild to profound mental retardation in instrument norms (the latter may be used if the adaptive behavior instrument does not present information on the means and standard deviations of the norming sample).

For adaptive behavior measures that **provide factor or multiple scale summary scores**, another criterion of significance is that the **majority** of these factor or multiple scale summary scores lie **2.0** or more standard deviations below the mean for the appropriate norming sample or lie **within the range** of adaptive behavior associated with an intellectual level consistent with mild to profound mental retardation, as indicated by the instrument norms. Significance **may also be demonstrated** if the **majority** of factor or multiple scale summary scores from an adaptive behavior measure lie at 2.0 or more standard deviations below the mean, as qualified above, **and** the composite score is less than 2.0 standard deviations below the mean (i.e., a person can qualify for services when the majority of subtest scores fall at -2.0 SD or more below the mean, even when the composite score does not).

Adaptive behavior measures that provide neither overall summary index scores nor factor or summary scores, as described above, **are unacceptable** as a means for determining presence of functional limitations constituting substantial handicap.

For adaptive behavior measures that permit assessment of both adaptive and maladaptive behavior, presence of clinically significant maladaptive behaviors in the absence of significant limitations in adaptive behavior, as defined here, **does not** meet the criterion of significant limitations in adaptive functioning.

ASSESSING INTELLECTUAL FUNCTIONING AND ADAPTIVE FUNCTIONING

Significant limitations in **general intellectual functioning** and limitations in **adaptive functioning** should be determined by different kinds of tests or measures.

Significant limitations in **general intellectual functioning** are determined from the findings of assessment by using a nationally normed and validated, and comprehensive, **individual measure of intelligence** that is administered in a standardized format, in its **entirety** in accordance with standardization, and interpreted by a qualified practitioner. In exceptional circumstances, when standardized formats have been determined to be inappropriate by a qualified practitioner, non-standardized testing formats should be used, provided that this is documented and an appropriate rationale is clearly stated.

Significant limitations in **adaptive functioning** are determined from the findings of assessment by using a nationally normed and validated, comprehensive, **individual measure of adaptive behavior** and **may not be stipulated** based upon a comprehensive, individual measure of intellectual functioning. Similarly, presence of significant limitations in adaptive behavior **does not constitute** a basis upon which presence of significantly subaverage intellectual functioning **may be stipulated**.

The completion of an adaptive behavior measure **should be required** by a DDSO in all instances where initial determinations of eligibility are made, or when application is made on behalf of an person previously receiving family or individual support services for additional services that may entail different or further eligibility criteria. An exception can be made in cases where a professional psychological examination using a comprehensive, individual, nationally normed intelligence scale results in a **full scale** (overall or summary) **IQ of 60 or lower** (based on a scale with a mean of 100 and a standard deviation of 15). The presence of significant adaptive behavior limitations may be assessed and confirmed through clinical observation or interview in such cases.

Based on findings from professional assessments, as indicated above, and review of historical and contemporary clinical records, a determination should be made, based on available evidence and clinical judgement, that significant functional limitations are not due to a current acute or severe phase of a psychiatric disorder, and that they are not a consequence of psychiatric disorder, alcoholism, or alcohol or substance abuse disorders and that these disorders did not result in a condition similar to mental retardation (as specified in MHL 1.03(22)) before the age of 22 years.

The determination should also be made that significant functional limitations are associated with, attendant to, or result from, a particular developmental disorder or combination of such disorders. For the purposes of eligibility determination, developmental disorders are defined as conditions that meet the criteria set forth in the Mental Hygiene Law for developmental disability and that involve injury, dysfunction, disorder, or impairment of the **central nervous system, i.e., brain or spinal cord.**

WHICH STANDARDIZED ASSESSMENT MEASURES ARE APPROPRIATE?

Standardized assessment measures that are appropriate as sources of information to be used in eligibility determination have several key characteristics:

- ◆ Their **reliability** and **validity** are suitably verified by peer reviewed research.
- ◆ Their **reliability, validity, indicated uses, and performance parameters** are adequately presented in the relevant technical manuals and test manuals.
- ◆ They are **normed or criterion referenced** and their performance has been ascertained, on a representative suitably structured population sample of sufficient size to permit stability of scores and score patterns.
- ◆ They are **normed** on suitably sized and reasonably **contemporary** representative population samples (i.e., the norms are not outdated, for example, established within the past 10 years).
- ◆ They are **standardized** in their mode and parameters (process) of administration, and administered in conformance with those parameters.
- ◆ They are suitably **structured** and **comprehensive** or targeted for their respective purposes, such as assessing intellectual, behavioral, social and personality, or academic functioning.

Examples of appropriate **intellectual measures** include:

- ◆ Kaufman Assessment Battery for Children.
- ◆ Leiter International Performance Scale.
- ◆ The Stanford-Binet Scales
- ◆ The Wechsler series of Intelligence Scales.

Brief or partial administration of comprehensive intellectual measures may be utilized only in circumstances where **standardized administration is impossible** due to sensory disability (e.g., deafness, blindness) or profound and generalized impairment of activity, and in conformance with ERA/APA/NCME (1999) standards for use and interpretation of individual test results.

Examples of standardized measures that are **not considered to be comprehensive** in nature:

- ◆ The Peabody Picture Vocabulary Test.
- ◆ The Quick Test.
- ◆ Slossen Intelligence Test-R (revised) or Slossen Full-Range Intelligence Test
- ◆ Testing formats that project unadministered subtest scores from those that are administered.
- ◆ Tests that do not include both high-verbal and low-verbal format items.

Examples of appropriate comprehensive **measures of adaptive behavior**:

- ◆ AAMR Adaptive Behavior Scale.
- ◆ Adaptive Behavior Assessment System.
- ◆ Comprehensive Test of Adaptive Behavior.
- ◆ Scales of Independent Behavior.
- ◆ Vineland Adaptive Behavior Scales.

ESTABLISHING SUBSTANTIAL HANDICAP FOR CHILDREN

Psychometric assessment is the preferred method for both SSI and OMRDD in establishing the presence of **marked limitation confirming substantial handicap**, and qualified professionals are expected to be knowledgeable about and versed in the use of differential diagnostic measures applicable within the **full range of referral ages**.

For children birth to seven years of age - eligibility requirements are the same as those for adults, except that, **based on clinical judgement**, DDSOs may grant eligibility provisionally for an identified time period.

For children birth to seven years of age ~ with developmental delay but without a specific diagnosis of a named or unnamed condition, and with or without premature birth, provisional eligibility **may be confirmed, based on clinical judgement**, by use of criteria based on **20CFR, Appendix 1 to Subpart P of Part 404 regarding SSI eligibility**, and determination of functional limitations in motor development, cognitive and communicative function, or in social function. **Moreover, for children age three to five years** ~ with developmental delay, a specific diagnosis of a named or unnamed condition may not be required, but if feasible and appropriate, efforts should be made to establish the diagnosis.

Consistent with Part 200.1(mm)(1) of the NYS Education Law, substantial handicap associated with delay can be documented by the results of an individual evaluation that indicates:

- ◆ A 12-month delay in one or more functional area(s); or
- ◆ A 33% delay in one functional area, or a 25% delay in each of two functional areas; or
- ◆ If appropriate standardized instruments are individually administered in the evaluation process, a score of 2.0 standard deviations below the mean in one functional area, or a score of 1.5 standard deviations below the mean in each of two functional areas.

If application is made for participation in **Care at Home waiver services**, the related, and pre-existing eligibility criteria shall apply.

Clinicians assessing eligibility of children age birth to three years may also

wish to review the NYS Department of Health Early Intervention Memorandum (1999-2) and related appendices for relevant information that may assist in relating assessment findings to decisions regarding eligibility in individual instances.

For children age birth to 7 years ~ psychometric and developmental measures that derive a developmental quotient or mental age **may be accepted as suitable and appropriate** means to obtain information that documents functional or intellectual delays or disability.

Psychometric instruments that may provide appropriate and needed information include, in addition to adaptive behavior scales suited for the assessment of infants, toddlers, preschoolers, or entering primary school age children:

- ◆ Battelle Developmental Inventory (BDI)
- ◆ Bayley Scales of Infant Ability - Revised
- ◆ Differential Ability Scales (DAS)
- ◆ Infant-Toddler Developmental Assessment (IDA)
- ◆ Kaufman Assessment Battery for Children (K-ABC)
- ◆ Stanford Binet Intelligence Scale - Fourth Edition (SB-IV)
- ◆ Wechsler Intelligence Scale for Children - Third Edition (WISC III)
- ◆ Wechsler Preschool and Primary Scale of Intelligence - Revised (WPPSI-R)
- ◆ Woodcock Johnson Psychoeducational Battery: Tests of Cognitive Ability - Revised

For children age 7 years and older and adolescents ~ the criteria to confirm either substantial disability or specific eligibility for services shall be **consistent with the practices generally applied to adults**, set forth in Section II of this document. That is, it is necessary to confirm a specific relevant and appropriate diagnosis, expectation of indefinite continuation, and presence of substantial handicap, using these practices. For children age 7 years and older, psychometric measures that are normed on the basis of a **summary quotient** constitute the preferred means to obtain information that documents **functional or intellectual delays or disability**.

SECTION IV: GUIDELINES FOR DDSO PROCESSES

A three-step process for developmental disability determination shall be established at each DDSO. The process is outlined below. It is expected that each DDSO will modify the process in small ways that are most compatible with DDSO operations, but the essential features will be retained.

Note: At any point in the eligibility determination process, **designated DDSO staff may request more complete information or further assessment of the person by the referral source or other current providers.** Staff may also request further assessment by an independent qualified practitioner, or may conduct selected assessments of the person in order to assure accuracy within the process.

STEP ONE:

For those applicants with complete documentation of a condition that may constitute a developmental disability, and whose presence is readily evident, determinations will be rendered by designated DDSO intake personnel.

For those applicants lacking complete documentation of a condition that may constitute a developmental disability, the designated DDSO intake personnel will request provision, by the referral source, of the needed additional documentation from the referral source.

Complete documentation should include, but not necessarily be limited to, a current psychological evaluation that includes assessment of intellectual functioning and a clinical evaluation of adaptive behavior, a social or psychosocial history, medical reports indicating health status and presenting diagnostic findings, and educational records. DDSOs should request copies of each of these clinical and historical documents, but may make determinations based on partial information from these sources, or should the information represented by these sources prove insufficient for this purpose, request additional information or records, or that further assessments be conducted.

Specifically, DDSOs should request that the following information be provided in each instance of eligibility determination:

- ◆ The results of an assessment of intellectual functioning, including subscale scores and I.Q. or comparable composite score.
- ◆ The results of an assessment of adaptive behavior, using a comprehensive adaptive behavior measure, including subscale, scale, and composite scores.
- ◆ Historical or contemporary documentation verifying age of onset of significant functional limitations.
- ◆ A full report or other summary of all contemporary diagnoses or classifications of health, physical, developmental, or psychiatric conditions that are relevant to the determination of eligibility.

Possible referral sources include the person seeking services, a family member, another interested party, or an agency or organization.

STEP TWO:

For those applicants for whom presence of developmental disability cannot be determined by designated DDSO intake personnel, each DDSO or Regional Office will establish at least one second step developmental disability determination team.

At minimum, this team will be composed of a licensed psychologist and certified social worker. OMRDD recognizes that when feasible, this team should also include a licensed physician, a physician's assistant, or a nurse practitioner. In lieu of a licensed psychologist, the second step or regional review process could utilize a doctoral level psychological professional with previous District or Regional experiencing completing eligibility determinations using current or recent eligibility standards for a period of at least one year. In the New York City Region, determination teams may advise the NYCRO eligibility committee at the discretion of the Associate Commissioner.

These professionals may also request needed additional documentation from the referral source, may request that further assessments be conducted, or may conduct assessments of the person referred.

STEP THREE:

For those people for whom presence of developmental disability cannot be determined by designated staff or by the second step determination team, the

findings will be submitted to the DDSO Director or his or her designee for review after consultation, if needed, with Central Office personnel.

Reconsideration of Adverse Determinations. An adverse determination of eligibility for OMRDD services may be reconsidered through internal provisions established as an element of this three-step process by each DDSO, but will typically be based upon insufficient evidence of a qualifying developmental disability or of the impact of a disability resulting in a substantial handicap. It may be beneficial to reconsider such determinations by convening a group of DDSO clinicians who were not involved in rendering the earlier adverse determination.

PROVISIONAL ELIGIBILITY FOR CHILDREN AGES BIRTH TO SEVEN YEARS

At Step Two or Step Three, when the available evidence indicates presence of developmental disability, but is insufficient for full determination, presence may be determined **provisionally** at the discretion of the DDSO Director or designee. In such cases, the person may be determined to have a developmental disability. However, **a determination review shall be required after a specified period of time following this initial determination**, based on a time span established concurrently with the initial provisional determination. Provisional eligibility determinations may be made repeatedly for the same person, but require specific review and approval by the DDSO Director or their designee at each occurrence.

It is expected that **provisional eligibility** will be established exclusively in those instances where infants and young children ages birth to seven years manifest substantial delay or specific congenital or acquired conditions with a high probability of resulting in developmental disability if services are not provided. Most often, due to the cycle of assessment and review practices in the educational sector and other factors relevant to informed prognostic judgements, reviews of provisional eligibility determinations will often be conducted at age 7 years, but may be completed at earlier ages if clinically warranted or warranted by DDSO policy. Review of a provisional eligibility determination **may** result in:

- ◆ Renewal of provisional eligibility;
- ◆ Establishment of non-provisional eligibility; or
- ◆ Loss of eligibility due to benefit from services or supports, habilitative benefits that have alleviated functional limitations, or remission of or

recovery from the condition upon which provisional eligibility was based.

MAINTENANCE OF RECORDS PERTAINING TO ELIGIBILITY

All documentation used for eligibility determination will become a permanent part of the clinical record for each person and will be maintained as such by the DDSO.

It is also recommended that a copy of these documents, including the determination, be retained on a permanent basis by referring agencies and by any providers of developmental services to each person.

SECTION V: FACTORS THAT PROMPT SECOND OR THIRD STEP REVIEWS

Certain factors are likely to prompt the need to use Step 2 or Step 3 for reviews of eligibility determinations. Fourteen practical examples follow.

1. Applying for services based on the presence of mental retardation without documented findings of assessments of intellectual functioning, adaptive behavior, or age of onset.
2. Applying for services based on the presence of any named condition or a comparable condition without specification of a diagnosis for that condition, or without relevant findings of assessments of adaptive behavior or age of onset.
3. Applying for services without substantiating age of onset ~ for example, by school, medical, or clinical records, comprehensive individual diagnostic assessments, or by history of service participation.
4. Applying for services without confirmation that onset prior to age 22 was evident as substantial handicap as defined herein.
5. Application for services submitted by a referral source that has in the past submitted inaccurate or incomplete information regarding other people and their related diagnoses, details of onset, continuation of disability, or substantiality of handicap.
6. Applying for services for a person with a sensory impairment (e.g., profound loss of vision or hearing). Generally, such people have not been found to meet eligibility criteria for developmental services. However, if other eligibility criteria of onset, persistence, and adaptive behavior limitations are met, and a person is cortically blind or deaf, or has a visual or auditory nerve degenerative disorder, it is possible that the person might be determined to be eligible or provisionally eligible.
7. Applying for services for a person with very special needs – for example having sensory impairments such as deafness or a severe vision impairment, having dyslexia or other marked impairments of sensory perception, being non-English speaking, or

being below the age of 5 years – and not having selected the most appropriate instruments to ascertain the nature of the disability condition or presence of substantial handicap.

8. Applying for services for a person involving a disability condition which is associated with idiosyncratic or greatly varying substantiality of handicap or functional limitations, and in which the severity and breadth of functional limitations consistent with substantial handicap are not adequately assessed and documented. This would include such conditions as:

- ◆ Asperger syndrome.
- ◆ Pervasive developmental disorder – NOS.
- ◆ Traumatic brain injury (TBI).
- ◆ Learning disability.
- ◆ Attention deficit hyperactivity disorder.

9. Applying for services for a person with incomplete documentation of disability, onset, expectations of indefinite continuation, or substantiality of handicap and past or present involvement in correctional or criminal justice services (CJS). In instances where correctional or CJS involvement is a concern, reviewers may wish to probe regarding the possibility of:

- ◆ Malingering.
- ◆ Assessment under inappropriate conditions.
- ◆ Functional illiteracy that drags down scores.
- ◆ The inconsistency with which adaptive behavior may be assessed or evident in correctional and noncorrectional environments (e.g., skill vs. performance opportunity issues).
- ◆ Neurological injury after age 21 years during correctional or CJS involvement.

10. Applying for services for a person with incomplete documentation of disability, onset, expectations of indefinite continuation, or substantiality of handicap and past or present involvement in persisting alcohol or drug abuse or dependence.

11. Applying for services for a person with past or present psychiatric disability:

- ◆ When documentation of a developmental disability previous to or concurrent with the psychiatric disability and occurring prior to age 22 is unavailable, or

- ◆ When intellectual and functional assessment findings consistent with presence of a developmental disability are limited to results obtained at times when the impact of psychiatric disability on the person's functioning is especially marked (e.g., during acute episodes, when not stable).

In order to confirm that functional limitations resulting in substantial handicap are associated with a condition recognized in MHL 1.03(22) as a developmental disability, it is crucial to ascertain whether the developmental condition and functional limitations pre-existed onset of psychiatric disability, or whether a pre-existing developmental condition may have been a risk factor for both onset of the psychiatric disability and increased severity of limitations in adaptive behavior.

In instances when psychiatric disability and developmental disability are both present, eligibility will be based on presence of developmental disability, as defined herein, regardless of whether the psychiatric disability or developmental disability is considered to be "primary." Such people may be dually-eligible, in that they are eligible for services from both the mental health and developmental disabilities services sectors. Some of these people may require stabilization services through the mental health sector, and further assessment prior to participation in developmental disabilities services.

12. Applying for services for a person with an IQ that is meaningfully higher than 70 and adaptive behavior similar to that of a person with MR, and absence of documentation of another disability condition. Such people would not meet the operational standard for eligibility but might be differentially diagnosed with another condition that might meet standards, given a full adaptive behavior assessment and satisfaction of onset and indefinite continuance requirements.

13. Applying for services for a person with a physical disability only, with no evidence of intellectual disability or disorder, or documentation of a condition affecting the central nervous system. Each referral of this type needs to be considered on its own merits in terms of eligibility criteria in MHL 1.03(22). It is important to note that OMRDD serves people who have severe cerebral palsy and average or above average intellectual skills who meet the requirements of MHL 1.03(22).

14. Applying for services for a person classified with Attention Deficit Hyperactivity Disorder (ADHD). Research indicates that behavior characteristic of ADHD can

persist into adulthood and this condition is usually first diagnosed during the developmental period. If the person receives medication (e.g., Ritalin), adaptive behavior should be assessed while the person is on medication to ascertain whether substantial adaptive behavior limitations are present or remain when the medication is used as prescribed.

SECTION VI: REFERENCES

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MEMORANDUM

TO: DDSO Directors
Central Office Leadership Team

FROM: Helene DeSanto

RE: Clarification of Provisions of the August 2001 Eligibility Advisory

DATE: December 13, 2002

OMRDD has received a number of requests from consumers, advocates, and providers to provide clarification regarding the Eligibility Guidelines that were distributed in August 2001. This memo provides clarification of operational aspects of the Guidelines.

Thank you in advance for your attention to this and the ongoing work of you and your staff related to eligibility determination.

This memo discusses concerns with respect to:

- Consistency in DDSO Implementation
- Central Office Role
- Notifications in the Course of Determinations
- Required and Discretionary Documentation
- Assuring Timely Determinations
- Further Clarification of Related Conditions

Consistency in DDSO Implementation of Eligibility Reviews

- DDSO directors remain responsible for the final determination of general eligibility.
- The three-step process has been restructured. In Step One an intake worker and intake coordinator; and if further review is needed, a licensed psychologist, and other staff are involved; in Step Two the DDSO director and a second licensed psychologist are involved, at a minimum. A third step will now be provided by NYCRO and the Upstate Regional Office. Step Two reviews will be completed by the DDSO for all negative determinations at Step One.
- Consumers and their advocates must be afforded the opportunity to request a third level review of a negative determination outcome at the second level.

Regional and Central Office Role in Eligibility Determination

- NYCRO and URO eligibility determination committees will be established. These committees will provide an additional level of review, following determination of ineligibility at the second step of the DDSO process. Referrals for review by these committees may be requested by a consumer, advocate, or referring voluntary agency and must be forwarded by the DDSO.

Notifications in the Course of Eligibility Determinations

- When a referral is made and documentation is incomplete, the DDSO is responsible for informing the referring party of any additional information that is required with respect to types of assessments or specialty assessments needed and why they are needed.
- When a negative determination is made, the DDSO is responsible for informing the referring party of the three-step process, and availability of the third level review following completion of the local process. When a negative determination is made the DDSO is responsible for providing the referring party with a list of the materials or reports that were reviewed in order to make the determination, and the reasons for denial based on criteria in MHL(1.03)(22).
- If application is made for a Medicaid service, as one aspect of a general application for eligibility determination, then a Notice of Decision must be issued, and processes available to applicants will include all aspects of the Medicaid fair hearing and due process.

Required Documentation and Discretionary Documentation

- The eligibility advisory lists adaptive behavior measures that are acceptable based upon their properties. This memo removes the AAMR Adaptive Behavior Scales - Residential and Community 2, adult scales from this list. People already determined to be eligible, using this scale, should not be redetermined.
- Each manual for each adaptive behavior scale contains required criteria for personnel who may complete the scale, conduct interviews to collect the necessary information, and score the scale. DDSOs should accept adaptive behavior scales administered only in the manner, and only by qualified interviewers or raters, required by the criteria stated for those scales in the respective manual. A DDSO psychologist should be involved in review of this information at the second step review to confirm that these criteria have been met and measures have been completed properly.
- Some DDSOs have advised consumers that use of one or another specific adaptive behavior scale is required to document substantial handicap. The intent of the eligibility advisory is to permit use of any of the listed adaptive behavior scales for determination purposes. Adaptive behavior scales should be completed in a manner that accurately reflects typical behavior, as specified in the respective manuals, rather than optimal skills under optimal circumstances.
- Some DDSOs have been very comprehensive in their requirements for referral materials. It is reasonable to request a social history or documentation of onset, an intellectual and adaptive behavior assessment, and available medical reports for review at the first step. DDSO staff should request other materials from the referring party only if more information is required.
- A notification summary is attached, titled "Important Facts: Eligibility for OMRDD Services." When consumers or advocates request a determination, a copy of this summary should be provided to them, together with any additional information the DDSO wishes to provide.

Assuring that Determinations are Made in a Timely Manner

The following operational guidelines should be followed by DDSOs:

- **Step One Determination:** Once a complete referral documentation packet is received, the DDSO should make a decision within 30 days. If found eligible, the DDSO should notify the referring party. If not found eligible at Step One, a referral must be made to Step Two.
- **Step Two Determination:** If needed, those involved in the Step Two review can ask for additional documentation. Once a complete referral packet (including any newly requested information) is received, the DDSO should make a decision within 14 days. If found eligible, the DDSO should notify the referring party. If found ineligible, the DDSO must provide the referring party with a list of materials or reports that were reviewed and the reasons for denial. In addition, if found ineligible, the availability of a third step review must be made known to referring party.
- **Step Three Determination:** Upon the receipt of complete referral documentation from the DDSO, the NYCRO or URO review committee will have 30 days to determine eligibility and notify the DDSO of its finding. The DDSO will then have 10 days to notify the referring party.

Further Clarification of Related or Similar Conditions

- Related conditions include presence of neurological impairment or degeneration as a result of a disease or disorder, such as muscular dystrophy (MD), which has pathologic vectors affecting the integrity of both musculature and the central nervous system, should be included as an eligible type of condition, even though MD may be manifested primarily in the form of impaired motor function.
- OMRDD has examined the relationship between this definition of "similar conditions" and the consequences of central nervous system disorders with respect to effects upon individual intellectual or adaptive functioning and resulting service needs, and has concluded that the present requirement of central nervous system disorder is an appropriate and reasonable approach for defining similar conditions.