

**Amendment of 14 NYCRR section 629.1  
Eligibility Determination Process**

**Proposed Rulemaking Regulations  
Effective Date: Upon Adoption**

- **Existing paragraph 629.1(b)(2) is amended to read as follows:**
  - (2) Provisional Eligibility
    - (i) Provisional eligibility may be determined in children, up to the age of seven[eight], who manifest substantial delays, with or without [or]specific congenital or acquired conditions that result in a high probability of a developmental disability if services are not provided, and whose condition and/or functioning may improve significantly over time, as a result of treatments and services. They must also be a New York State resident or intend to reside in New York State at the time that services are delivered.
    - (ii) Provisionally eligible children who reach their 7<sup>th</sup> birthday cannot be authorized for additional services until a final eligibility determination has been made by OPWDD, except in extraordinary circumstances upon the approval of the Commissioner or their designee.
    - (iii) Provisional eligibility must be redetermined by a child's 8<sup>th</sup> birthday. Children 7 years and older seeking OPWDD services must meet full OPWDD eligibility criteria.
- **A new section in part 629 is added to read as follows:**

**629.2 - Eligibility Criteria**

- (a) Applicability. This section applies to any person applying to OPWDD for a determination of whether the person has a qualifying condition that meets the criteria of developmental disability, as set forth in Mental Hygiene Law (MHL) § 1.03(22), making them eligible for certain OPWDD operated, certified, funded and/or authorized services.
- (b) General Eligibility Provisions.
  - (1) Eligibility is determined by the consistent application of criteria described in subdivisions (c) through (f) of this section, based on the definition of developmental disability established in MHL § 1.03(22).
  - (2) To be eligible for OPWDD services, the person seeking eligibility must be a New York State resident or intend to reside in New York State at the time the services are delivered.
  - (3) The process for reviewing eligibility requests is described in section 629.1 of this Part.
- (c) Qualifying Conditions.
  - (1) Qualifying conditions must meet the criteria set forth in MHL § 1.03(22)(a).
  - (2) Qualifying related conditions under MHL § 1.03(22)(a)(2) must be closely related to intellectual disability, including that they must cause or result from injury to, or dysfunction, disorder, or impairment of, the central nervous system.

(3) A valid diagnosis of a qualifying condition named in MHL § 1.03(22)(a)(1) or related condition as defined in MHL § 1.03(22)(a)(2) is required.

(d) Functional Limitations.

(1) Whether a person's functional limitations satisfy the requirement of substantial handicap under MHL § 1.03(22)(d) is determined by at least one acceptable assessment. Assessments are acceptable only when they:

- (i) use comprehensive, nationally normed and validated individual measures;
- (ii) are administered and interpreted by a qualified practitioner; and
- (iii) follow appropriate administration guidelines.

(2) Functional limitations are considered a substantial handicap when they are associated with, attendant to, or result from, a qualifying condition as described in subdivision (c) of this section, and:

- (i) they prohibit the person from being able to function independently in daily life;  
or
- (ii) when the development of the person's functional skills related to daily living are significantly below the expectations given the person's age; and
- (iii) the limitations are consistent with deficits in adaptive functioning as described in paragraph (4) of this subdivision.

(3) Intellectual Functioning.

(i) Significant limitations in general intellectual functioning must be determined from the findings of one or more acceptable assessments. Assessments are acceptable only when they employ an independent measure of intelligence that is:

- (a) comprehensive, nationally normed, and validated;
- (b) administered in a standardized format;
- (c) administered in its entirety;
- (d) administered in accordance with standardization procedures; and
- (e) interpreted by a qualified practitioner.

(ii) In exceptional circumstances, OPWDD may accept non-standardized testing formats if appropriate rationale and justification is clearly documented.

(iii) Functional limitations must not be presumed solely based on below average scores on assessments of intellectual functioning.

(4) Adaptive Functioning.

(i) Significant limitations in adaptive functioning must be determined from the findings of one or more acceptable assessments. Assessments are acceptable only when they employ an independent measure of intelligence that is:

- (a) comprehensive, nationally normed and validated;
- (b) administered in a standardized format;
- (c) administered in its entirety;
- (d) administered in accordance with standardization procedures; and
- (e) interpreted by a qualified practitioner.

(ii) Adaptive behavior measures that do not provide an overall composite score, multiple domain scores, or skill area scores will not be considered for determining the presence of functional limitations that constitute a substantial handicap.

(iii) The requirement of a substantial handicap may be satisfied if the overall composite score, or the majority of domain or specific skill area/subdomain

scores, fall two or more standard deviations below the mean on a comprehensive and validated measure of adaptive behavior.

(iv) If adaptive behavior measures that permit assessment of both adaptive and maladaptive behavior are used, a finding of clinically significant maladaptive behaviors will not constitute a substantial handicap without a concurrent finding of significant limitations in adaptive behavior.

(v) An assessment of significant limitations in adaptive behavior, on its own, must not constitute a basis upon which the presence of significantly below average intellectual functioning is presumed.

(5) Co-occurring Disorders.

(i) The requirement of a substantial handicap is not satisfied if significant functional limitations are determined to be the result of a current acute or severe phase of a psychiatric disorder or a consequence of the person's psychiatric disorder, substance use, or substance-related disorder.

(e) Onset.

(1) To satisfy the requirements of MHL § 1.03(22)(b), the qualifying condition, as described in subdivision (c) of this section, and the associated functional limitations, as described in subdivision (d) of this section, must verifiably be established to have occurred before the person reached the age of 22.

(2) The person seeking eligibility, or other relevant party, must submit historical medical records establishing the onset of their qualifying condition and functional limitations before the age of 22. In cases where such records are presumed to no longer exist, the person seeking eligibility must make requests for this information and document both the request for information and the response to the request.

(3) If no information is available to determine the age of onset, Developmental Disabilities Regional Offices may rely on other sources of information to determine the age of onset, including the informed clinical judgment of appropriately licensed professionals.

(f) Indefinite Duration.

(1) To satisfy the requirements of MHL § 1.03(22)(c), there must be a reasonable likelihood of indefinite continuation of the qualifying condition, as described in subdivision (c) of this section, and of the associated functional limitations, as described in subdivision (d) of this section.