



FIRST EDITION

The Developmental Disability Eligibility Appeal Process

Has someone you know received notice that he or she is not eligible for services?

Is someone you know about to lose services after an eligibility review?

You can help your family member or friend challenge a

Developmental Disability Services Denial or Termination.

You can represent your family member or friend in the appeal process!

© 2015 Disability Rights Oregon

610 SW Broadway, Suite 200, Portland OR 97205

Voice: 503-243-2081 or 1-800-452-1694

TTY: 503-323-9161 or 1-800-556-5351

Fax: 503-243-1738 or 1-800-513-2321

E-mail: welcome@droregon.org

Website: www.droregon.org

Written by

Julia Greenfield, Attorney

Thank you to attorneys Peggy Rubin and Beth Brownhill and to the attorneys and paralegals at Markowitz, Herbold PC for their valuable contributions to the development of this guide.

Disability Rights Oregon is tax-exempt under Section 501(c)(3) of the Internal Revenue Code. Contributions are tax-deductible and will help us provide services to Oregonians with disabilities.

Portions of this Handbook may be reproduced without permission of *Disability Rights Oregon*, provided that the source is appropriately credited.

NOTICE: This Handbook contains general information about legal issues and legal rights; however, it is not a substitute for legal advice. For specific information about the Developmental Disability Eligibility Appeal Process, contact Disability Rights Oregon or your attorney.

INTRODUCTION AND PURPOSE OF THIS GUIDE

If a person disagrees with a decision denying or terminating Developmental Disability services, he or she has the right to appeal that decision by asking for a hearing with an Administrative Law Judge (ALJ). A person can be represented at the hearing by a lawyer or by a non-lawyer, such as a parent or friend. This guide is intended for non-lawyers who want to help a family member or friend appeal a notice of ineligibility for services.

Part One of this guide (The Hearing Process) tells you about:

- The deadline for requesting a hearing
- How to request a hearing
- How to request that services continue until the hearing decision
- How to get ready for the informal conference and the hearing
- What to expect at the informal conference and hearing and afterward

Part Two of this guide (Intellectual Disability and Other Developmental Disability) discusses:

- Eligibility criteria for qualifying for services based on:
 - Intellectual disability
 - Other developmental disability

Part Three of this guide (Adaptive Behavior) explains:

- What “adaptive behavior” is
- How adaptive behavior is measured and scored
- What it means to have a “significant impairment in adaptive behavior”
- What it means to “require training or support similar to that required by individuals with intellectual disability”

Part Four of this guide (Common Problems in Establishing Eligibility) discusses:

- Some of the common reasons why people who are eligible may be found ineligible for services
- What you can do in these situations

Table of Contents

TABLE OF CONTENTS

INTRODUCTION AND PURPOSE OF THIS GUIDE i
TABLE OF CONTENTS iii
PART ONE: THE HEARING PROCESS 1
What are the basic eligibility criteria that need to be met in order to win a Developmental Disability Eligibility hearing?.....1
Qualifying Condition..... 1
Qualifying adaptive behavior scores 1
What is an administrative hearing?1
Who conducts the hearing? 2
How is the hearing conducted?..... 2
What evidence does the ALJ review?..... 2
Who participates in the hearing besides the ALJ? 2
What is the deadline for requesting a hearing?..... 3
How do I request a hearing? 3
What if the deadline has already passed or the hearing request is late?..... 4
How do I request that services continue until the hearing decision?5
What if the Claimant misses the deadline for requesting continuing services?5
If the Claimant loses the hearing, will she have to pay back the cost of the continuing services?6
What is the Informal Conference?6
How should I get ready for the Informal Conference? 6
What should I do during the Informal Conference? 7
What happens if ODDS still thinks the Claimant is not eligible after the Informal Conference?8
How should I get ready for the hearing?8
What happens at the hearing? (A step-by-step description)10
What happens after the hearing?12
PART TWO: INTELLECTUAL DISABILITY AND OTHER DEVELOPMENTAL DISABILITY 13
Introduction13
Eligibility based on intellectual disability13
What are the criteria for having a qualifying condition of intellectual disability?..... 14

Eligibility based on other developmental disability	15
What are the criteria for having a qualifying condition of a developmental disability other than intellectual disability (“other developmental disability”?)	15
PART THREE: ADAPTIVE BEHAVIOR.....	17
What is adaptive behavior?.....	17
What are some examples of adaptive behaviors?	17
How is adaptive behavior measured?	17
What categories and subcategories of adaptive behavior do the most common tests evaluate and score?.....	18
Comparison of common adaptive behavior tests	18
What is a “significant impairment in adaptive behavior”?	19
What does it mean for an individual with a developmental disability other than intellectual disability to “require training or support similar to that required by individuals with intellectual disability?”	21
What scores are “two or more standard deviations below the norm” on the four most commonly used adaptive behavior tests?	22
PART FOUR: COMMON PROBLEMS THAT ARISE IN ESTABLISHING ELIGIBILITY, AND WHAT TO DO ABOUT THEM	23
Issues related to intellectual disability.....	23
ISSUE: No IQ test scores from childhood.....	23
ISSUE: The individual’s IQ scores were measured at various points in her life. Some, but not all, of her full-scale IQ scores were 75 or below.....	24
Issues related to other developmental disabilities	24
ISSUE: The individual has been diagnosed with a developmental disability, but does not have records from childhood (prior to age 22) to prove when the disability began.....	24
ISSUE: The individual has signs or symptoms of fetal alcohol syndrome (FAS) or fetal alcohol effects (FAE), but has never been fully evaluated for these conditions.	25
Issues related to adaptive behavior	26
ISSUE: The individual’s adaptive behavior test scores may not be a reliable or accurate indicator of the individual’s functioning.....	26
ISSUE: There is a significant discrepancy between the individual’s low intellectual functioning (IQ) and her higher adaptive functioning scores.....	27
ISSUE: The adaptive behavior test administered to the Claimant may not be the most appropriate test for determining whether the Claimant has a significant impairment in adaptive behavior.	28
ISSUE: The individual has a significant impairment in adaptive behavior based on the results of one current adaptive test, but not another.....	29
ISSUE: The individual has a significant impairment in adaptive functioning, but the CDDP says it is not directly related to the intellectual or other developmental disability. The CDDP says that another condition is the primary cause of the individual’s significant impairment in adaptive functioning.	29
How to get a new or updated psychological evaluation.....	30
APPENDIX.....	32
Form: Statement of Good Cause for Late Hearing Request or Late Request for Continuing Services32	

PART ONE: THE HEARING PROCESS

What are the basic eligibility criteria that need to be met in order to win a Developmental Disability Eligibility hearing?

Remember this basic equation:

Qualifying condition

(intellectual disability or other developmental disability)

+ Qualifying adaptive behavior scores

= Eligibility

Qualifying Condition

Two types of disabilities can make someone eligible for developmental disability services: intellectual disability or other developmental disability. The eligibility criteria for these two types of conditions are discussed further in Part Two.

Qualifying adaptive behavior scores

In addition to having a diagnosis of intellectual or developmental disability, a person must also have qualifying scores on a standardized test used to evaluate adaptive behavior. Adaptive behavior is another term for basic life skills. The criteria for having qualifying adaptive behavior scores are discussed further in Part Three.

What is an administrative hearing?

If a person disagrees with a decision denying or terminating Developmental Disability services, he or she has the right to appeal that decision by asking for an administrative hearing. An administrative hearing is an opportunity for an impartial person to review the evidence and decide

whether an agency decision was correct or incorrect. The agency decision challenged here is the “Notification of Planned Action” that says that an individual has been denied or terminated from developmental disability services.

Who conducts the hearing?

The impartial person who conducts the hearing is called an Administrative Law Judge (ALJ). The ALJ who conducts the hearing is not a court judge and does not wear a robe. After the hearing is over, the ALJ will decide if the Claimant is eligible for services.

How is the hearing conducted?

The hearing usually happens by telephone, as a conference call with several people on the line all at the same time. The hearing is similar to a hearing or trial in a court, but is much less formal and there are fewer rules. During the hearing, representatives of the Department of Human Services Office of Developmental Disabilities (ODDS) tell the ALJ why the Claimant was found ineligible for services. Next, you can tell the ALJ the Claimant’s side of the story. After the hearing, the ALJ will write a decision that reverses the eligibility determination (Claimant wins) or affirms the eligibility determination (Claimant loses.) It may take several weeks or even months for the ALJ to issue the written decision.

What evidence does the ALJ review?

Both sides usually submit exhibits before the hearing. The ALJ listens to all the testimony at the hearing, asks questions of the witnesses, and reviews all evidence submitted by ODDS and by the Claimant. The ALJ only reviews the testimony given at the hearing and the evidence submitted for the hearing. The ALJ does not question anyone outside the hearing itself, and does not do any independent research.

Who participates in the hearing besides the ALJ?

DHS participants: Two DHS employees, the SPD Hearing Representative and the ODDS Diagnosis and Evaluation Coordinator, participate in the hearing. The SPD Hearing Representative represents ODDS in the hearing by questioning ODDS witnesses and explaining ODDS’s evidence to the ALJ. The ODDS Diagnosis and Evaluation Coordinator is the main witness for ODDS. The Diagnosis and Evaluation Coordinator answers questions to explain why ODDS thinks the Claimant is not eligible. The SPD Hearing Representative may call other witnesses, like a psychologist, to help explain ODDS’s evidence to the ALJ.

Claimant’s participants: The Claimant’s Representative represents the Claimant by questioning witnesses and by explaining why the Claimant is eligible. The Claimant’s Representative may also call and question other witnesses to help explain the Claimant’s evidence to the ALJ, such as

psychologists or doctors who have treated or evaluated the Claimant. The Claimant may participate in the hearing if the Claimant is an adult and able to answer questions. Often the Claimant either just listens or is not on the phone for the hearing at all. If the Claimant will not be on the phone, the Claimant's Representative will need to tell the ALJ that the Claimant has waived his or her appearance at the hearing.

What is the deadline for requesting a hearing?

Watch the Calendar: *ODDS in Salem must receive the hearing request within 90 days of the date of the Notice of Eligibility Determination*, found on the upper right-hand corner of the notice denying eligibility. The Claimant or the Claimant's Representative is responsible for making sure the request is made on time. This is a very important deadline and missing it may result in ODDS's denying the Claimant a hearing.

Note: Although there is a 90 day window to request a hearing, **you must act sooner for the Claimant's services to continue until the hearing decision**. See "How do I request that services continue until the hearing decision?" on page 5.

How do I request a hearing?

There are two ways to request a hearing:

1. Verbally request a hearing by talking to the CDDP eligibility specialist, the CDDP caseworker, or any employee of DHS or ODDS. **Note: DRO does not recommend a verbal hearing request (see box on the next page.)**
2. Fill out and submit an ODDS Administrative Hearing Request (see box on the next page.) **DRO strongly recommends submitting this form.**

How do I Request a Hearing?

DRO strongly recommends filling out and submitting an Office of Developmental Disability Services (ODDS) Administrative Hearing Request Form (Form SDS 0443DD, a copy is attached at the end of this guide.) You may also request the Hearing Request Form from your County Community Development Disability Program (CDDP). After ODDS receives the hearing request, the CDDP sends the Claimant's records to ODDS, which assumes primary responsibility for the case.

You may send the hearing request to ODDS by:

Mail to:

Oregon Office of Developmental Disability Services
Attn: Administrative Specialist
500 Summer St., E-09
Salem, OR 97301

Certified & Return Receipt Requested is best.

Fax to: (503) 373-7275

Keep the fax transmittal receipt to show that you requested the hearing within 90 days from the date of the Notice of Eligibility Determination.

Deliver it in person to: The county CDDP to send to SPD.

Ask them to stamp the Hearing Request Form with the date, to give you a photocopy that shows the date stamp and to send the hearing request to the SPD Diagnosis and Evaluation Coordinator in Salem.

What if the deadline has already passed or the hearing request is late?

An Oregon Administrative Rule (OAR) excuses a late hearing request if the Claimant or the Claimant's Representative had "good cause" for the late request. Good cause is a circumstance beyond the control of the Claimant and Claimant's Representative. A "Good Cause for Late Hearing Request Form" in the Appendix at the end of this guide sets out the full definition of good cause. Use this form if you know that you are sending the hearing request late, or if you are notified that your hearing request was late.

How do I request that services continue until the hearing decision?

If the Claimant's services are being terminated, the Claimant has the right to have her services continue at the same level until the hearing has been held and a hearing decision is issued. In order to qualify for continuing services, the Claimant or her representative must do one of the following:

(1) Request a hearing within 10 days of the date the Notification of Planned Action was received

- If the hearing is requested within 10 days of receipt of the Notification of Planned Action, it is not necessary to specifically request continuing services. However, it is still helpful to notify the CDDP or ODDS that the Claimant wants her services to continue until the hearing decision. See below for three ways to do that.

(2) Request a hearing and request continuing services by the later of these two dates: (a) the "effective date" on the Notification of Planned Action, or (b) 10 business days following the date the Notification of Planned Action was issued.

- Continuing services can be requested in one of three ways:
 - ✓ Checking the "yes" box on the Administrative Hearing Request form
 - ✓ Writing an e-mail or letter to the CDDP or ODDS
 - ✓ Verbally notifying the CDDP or ODDS

What if the Claimant misses the deadline for requesting continuing services?

An Oregon Administrative Rule (OAR) excuses a late request for continuing services if the Claimant or the Claimant's Representative had "good cause" for the late request. Good cause is a circumstance beyond the control of the Claimant and Claimant's Representative. A "Good Cause for Late Hearing Request Form" in the Appendix at the end of this guide sets out the full definition of good cause. Use this form if you know that you are making a late request for continuing services, or if you are notified that your request for continuing services was late.

If the Claimant loses the hearing, will she have to pay back the cost of the continuing services?

The CDDP or ODDS may warn you or the Claimant that if the Claimant receives continuing services but then loses the hearing, she will have to pay back the value of the continuing services she received while waiting for the hearing decision. In fact, however, it is only in very rare circumstances that the Claimant could be legally required to repay the value of her continuing services. Please contact DRO for more information if you are uncertain whether to request continuing services. Be sure the Claimant does not miss the deadline for requesting continuing services while you are waiting for advice! You can always cancel the continuing services later if necessary.

What is the Informal Conference?

After ODDS receives the Hearing Request and before a hearing is scheduled, the SPD Hearing Representative will send a letter with the date and time of the Informal Conference and information about how to participate in the Informal Conference by phone.

The Informal Conference is a telephone meeting between the Claimant (if able to participate,) the Claimant's Representative, the ODDS Diagnosis and Evaluation Coordinator, and the SPD Hearing Representative. The Administrative Law Judge does not participate. It is a chance to understand the issues from both sides and to better prepare for the hearing. You may settle the matter.

How should I get ready for the Informal Conference?

Prior to the Informal Conference:

- ***Deal with scheduling conflicts:*** Call the SPD Hearing Representative if you have a serious scheduling conflict with the Informal Conference and need to ask for a new time.
- ***Plan where to be for the phone meeting:*** Plan a quiet place to participate in the telephone meeting where you can spread out and look at the documents that will be discussed. The meeting may take up to an hour. If you have children, arrange child care. Plan to avoid using a cell phone if possible.
- ***Ask for records:*** Ask the CDDP or the SPD Hearing Representative to send you copies of all records listed on the "Records Used in Eligibility Decision" form that is part of the Notification of Planned Action.
- ***Ask for rules:*** Ask the CDDP or the SPD Hearing Representative to send you copies of all Oregon Administrative Rules (OARs) listed on the Notification of Planned Action.

- **Provide other helpful documents:** If you have other documents that will help show that the Claimant is eligible, call the SPD Hearing Representative and arrange to mail or fax those documents to him or her.
- **Gather documentation:** Gather the following documents to have with you during the conference so you can look at them and ask questions:
 - Notification of Planned Action
 - Each of the documents identified in the “Records Used in the Decision” section of the Notification of Planned Action.
 - Any other documents you think will help show that the Claimant is eligible.
 - The Oregon Administrative Rules (OARs) listed on the Notice of Eligibility Determination

What should I do during the Informal Conference?

1. Take detailed notes throughout the conference.

While you are taking notes, ask people to slow down or provide extra time for you to record this information. Don’t hesitate to ask questions or to ask people to repeat information as many times as necessary.

2. Ask questions to understand why ODDS believes the Claimant is not eligible.

ODDS representatives will explain why they are denying or stopping DD services. Ask them to tell you:

- What specific parts and specific language of the records (the reports and other documentation) make ODDS believe the Claimant is not eligible. Underline or highlight this language in your copy of the records.
- What specific parts and specific language in the Oregon Administrative Rules (OARs) the determination is based on. Underline or highlight this language in your copy of the rules.
- Whether ODDS will have witnesses at the hearing. If yes, ask who the witnesses will be and what they will be asked to testify about.

3. Be sure the reason ODDS gives for why the Claimant is not eligible is the same reason that is listed on the Notification of Planned Action.

If the reason is different, ask ODDS to provide an amended Notice. This is important because at the hearing the ALJ is only supposed to consider the reason(s) listed on the Notice.

4. Tell ODDS if you have new information showing that the Claimant is eligible.

If you can, send any new documents to the SPD Hearing Coordinator before the conference. If you think that ODDS has overlooked information that was already in the Claimant's records, point out that information.

5. Talk about whether a new evaluation of the Claimant is necessary.

In some circumstances, it may be possible to demonstrate a Claimant's eligibility by obtaining a new or updated psychological evaluation. If you believe that a new evaluation may produce evidence to show that the Claimant is eligible, you can:

- ask ODDS to refer the Claimant back to a psychologist who has already evaluated him/her, to gather more information or perform limited additional testing, or
- ask ODDS to refer the Claimant to a new psychologist for an entirely new evaluation, or
- tell ODDS that you will help the Claimant get a new or updated evaluation, and ask ODDS to agree to postponement of the hearing if necessary in order to allow time for this.

Part 2 of this guide provides more information about how to get a new psychological evaluation.

What happens if ODDS still thinks the Claimant is not eligible after the Informal Conference?

If ODDS still believes the Claimant is not eligible after the Informal Conference, the hearing will occur as scheduled, unless a postponement is requested and granted. If the Claimant has not yet received a notice from the Office of Administrative Hearings with the hearing date and time, the scheduling notice should arrive soon.

How should I get ready for the hearing?

1. Handle hearing logistics as soon as possible

- ***Deal with scheduling conflicts:*** If you have a serious scheduling conflict with the hearing date, call the OAH Hearing Coordinator, whose name and telephone number will be on the Notice of Hearing. Explain the scheduling conflict and ask for a new time.
- ***Request a postponement of the hearing if you need more time:*** If you are trying to arrange a new evaluation of the Claimant and it will not be completed by the hearing date, you will need to postpone the hearing. You will first need to confirm with the SPD Hearing Representative that ODDS does not oppose postponement of the hearing. Then, call the OAH Hearing Coordinator and ask for postponement of the hearing. Tell

the OAH Hearing Coordinator that the SPD Hearing Representative has agreed to the postponement. If ODDS or the SPD Hearing Representative refuse to agree to a postponement of the hearing, contact DRO for advice about this issue.

- **Arrange for an interpreter:** Call the SPD Hearing Representative if you, the Claimant, or one of the Claimant's witnesses needs a foreign language interpreter or a sign language interpreter. A family member or friend will not be permitted to act as an interpreter during the hearing.
- **Request an in-person hearing if needed to accommodate a disability:** Call the OAH Hearing Coordinator if you need an in-person hearing to due a disability that would make it difficult for the Claimant or for you to participate in a telephone hearing.
- **Arrange a place with a landline phone:** Plan a quiet place with a landline phone where you can spread out the notes and documents you will need to have available during the hearing. Cell phones do not work well for hearings due to the phone system used by the Office of Administrative Hearings. If you have children, arrange child care for the hearing, which may take longer than an hour. If you do not have a quiet place with a landline for the hearing, contact your CDDP to arrange to use a room and phone at the CDDP to participate in the hearing.

2. Prepare and submit any exhibits you want the ALJ to consider:

Exhibits are the documents that ODDS and the Claimant give to the ALJ to support their positions. Your exhibits might include letters from doctors or psychologists addressing how the Claimant meets eligibility criteria, or reports from medical or psychological evaluations. The Notice of Hearing from the Office of Administrative Hearings gives instructions for labeling and submitting the exhibits. It is important to follow the instructions. If possible, submit the exhibits at least one week prior to the hearing.

3. Prepare a document of your oral testimony for the hearing:

Your role during the hearing will be to explain to the ALJ why the Claimant is eligible for Developmental Disability services.

Try to understand why ODDS thinks the Claimant isn't eligible for benefits.

- What rule (OAR) for eligibility does ODDS say the Claimant doesn't meet?
- What specific part or parts of the record does ODDS rely on as support for the Claimant's not meeting the eligibility criteria? For example, ODDS may rely on specific wording in a psychological evaluation.

For each reason ODDS gives for the Claimant not meeting the eligibility criteria, form an argument as to why the Claimant does meet the criteria. Have your arguments written down to help you stay focused on what you need to tell the ALJ.

- What rule (OAR) for eligibility does the claimant meet?
- What specific parts of the record can you point to that support the Claimant's eligibility? Mark the specific language in the record that supports the Claimant's eligibility so that you can refer to it during the hearing.

4. Decide if you want to call witnesses.

- Witnesses may be anyone who has helpful information about the Claimant's disability, such as a psychologist or a doctor who has diagnosed, treated or evaluated the Claimant.
- A witness can either be in the same room with you, or can call in to the hearing with the number and access code given on the Notice of Hearing.
- If a witness is a medical professional who cannot be available to participate for the entire hearing, contact the OAH Hearing Coordinator to discuss whether it is possible to notify the ALJ that the witness is only available at a certain time. Ask the Hearing Coordinator to ask the ALJ if he or she will allow the witness to testify out of order if necessary. Since ODDS presents its case first, you might request that the ALJ allow the Claimant's witness to testify approximately 45 minutes after the start of the hearing.

What happens at the hearing? (A step-by-step description)

1. General tips for during the hearing

- Use the document you created, showing ODDS's and Claimant's arguments, to stay focused.
- Take notes while ODDS witnesses are speaking to remember what to ask them when it's your turn.
- Be polite.
- Do not interrupt the ALJ, the SPD Hearing Representative, or a witness, even if you disagree or believe they are saying something that is incorrect. Take notes on what you disagree with, and wait your turn to speak.

2. Calling in

Call the phone number listed on the Notice of Telephone Hearing at the date and time on the notice. The automated system will prompt you to enter the access code. You may be briefly placed on hold, and then you will be placed on the conference call. The ALJ will ask you to identify yourself; say who you are and who is with you. Once all participants have called in, the ALJ will introduce everyone and start the hearing. The hearing will be recorded.

3. Opening statements

Some ALJs allow opening statements and others do not. If the ALJ allows opening statements, the SPD Hearing Representative will go first. If you choose to make an opening statement, it should be brief and simple. You may say something like: “Your honor, (name of Claimant) is eligible for services because (a few short sentences summarizing your evidence that the Claimant qualifies.) The determination should be reversed. Thank you.”

4. ODDS’s evidence

The ALJ will ask the SPD Hearing Representative to present ODDS’s evidence first. The SPD Hearing Representative will call the ODDS Disability and Eligibility Coordinator as a witness to explain ODDS’s position that the Claimant is not eligible. The SPD Hearing Representative may call other witnesses too.

5. Questioning ODDS’s witnesses

After the SPD Hearing Representative and the ALJ finish questioning each ODDS witness, it is your turn to ask the witness any additional questions you may have. Even though the witness is testifying for ODDS, the witness may be able to provide information that helps support the Claimant’s eligibility.

6. The Claimant’s evidence

- Next it is your turn to explain why the Claimant is eligible for Developmental Disability services. Refer to your notes to explain to the ALJ why the Claimant is eligible. Point out the specific language in specific documents that shows that the Claimant meets eligibility criteria. The SPD Hearing Representative and the ALJ may have questions for you. Answer their questions to the best of your ability.
- If you have called witnesses for the Claimant, you will need to question each witness. Ask questions that will allow the witness to explain why the Claimant meets the eligibility criteria. The ALJ and the SPD Hearing Representative can also question your witnesses.

7. Closing statements

Some ALJs allow closing statements and others do not. If the ALJ allows closing statements, the SPD Hearing Representative will go first. If you choose to then make a closing statement, it should be brief and simple. You could say something like: “Your honor, I reviewed the evidence that proves (name of Claimant) has a developmental disability and is eligible for services. (Briefly list evidence.) The determination should be reversed. Thank you.”

What happens after the hearing?

After the hearing, the ALJ will mail a written decision to the Claimant and to ODDS. It may take several weeks or even several months for the ALJ to send the decision. The ALJ’s decision will reverse the determination of ineligibility (Claimant wins) or uphold the determination of ineligibility (Claimant loses.) It will include Findings of Fact, Conclusions of Law, and an Order. It will explain options for further appeal if you disagree with the ALJ’s decision.

Part
2

PART TWO: INTELLECTUAL DISABILITY AND OTHER DEVELOPMENTAL DISABILITY

Introduction

	Qualifying condition <i>(intellectual disability or other developmental disability)</i>
+	Qualifying adaptive behavior scores
<hr/>	
=	Eligibility

A person can be found eligible for developmental disability services based on having either an **intellectual disability** or **another developmental disability**. (In either case, the individual must also have **qualifying adaptive behavior scores** – this is discussed in Part 3.) Part 2 of this Guide explains the eligibility criteria for each type of qualifying condition: intellectual disability and other developmental disability.

Eligibility based on intellectual disability

	IQ of 75 or below <i>(current and in childhood)</i>
+	Significant impairment in adaptive behavior
<hr/>	
=	Intellectual Disability

What are the criteria for having a qualifying condition of intellectual disability?

Intellectual Disability: IQ of 75 or Below	Intellectual Disability: Adaptive Behavior
Current full-scale IQ of 75 or below <ul style="list-style-type: none"> • Began before the individual’s 18th birthday • Originates in the brain • Is expected to last indefinitely 	Significant impairment in adaptive behavior <ul style="list-style-type: none"> • <i>Directly related</i> to the intellectual disability (low IQ) • Not <i>primarily</i> caused by some other condition

1. IQ of 75 or below

To qualify for developmental disability services based on intellectual disability, a person must have a current full-scale IQ of 75 or below. “Current” means measured within the last three years.

Intelligence includes understanding, reasoning, problem solving, and other cognitive abilities. To measure intelligence, psychologists administer standardized IQ tests. The most widely-used IQ tests for adults are the Weschler, the Stanford-Binet, and the WAISC. These tests yield a score called the “intelligence quotient,” or IQ. The overall IQ score is called the full-scale score. This score represents the individual’s total combined performance on all the components of the IQ test. Depending on the particular IQ test, component (or “index”) IQ scores are also calculated. Some examples of index scores are verbal comprehension, perceptual reasoning, working memory, and processing speed.

Intellectual disability is different from a learning disability. People with learning disabilities often have wide discrepancies between two or more of their component (index) IQ scores. For example, a person who has a relatively high verbal IQ score and a relatively low perceptual reasoning IQ score may be diagnosed with a learning disability. Learning disabilities are not considered to be qualifying conditions for developmental disability services in Oregon.

2. Began in childhood (before age 18)

To qualify for developmental disability services as an adult, it is not enough to show that the individual’s current IQ is under 75. The individual must also show that her intellectual disability “manifested during the developmental period.” For intellectual disability, the developmental

period means prior to age 18. The individual must show that her full-scale IQ was 75 or below before her 18th birthday.

3. Originates (started) in the brain

The individual’s low IQ must be due to a neurological condition – a condition that began in her brain. The low IQ cannot be due to external factors like a lack of education, a disruptive childhood, etc.

4. Expected to Last Indefinitely

The intellectual disability must appear to be permanent and not temporary, in the opinion of a qualified professional.

5. Significant Impairment in Adaptive Behavior

The intellectual disability constitutes a “significant impairment” in the individual’s adaptive behavior, as determined by the individual’s adaptive behavior test scores. This requirement is discussed further in Part 3.

Eligibility based on other developmental disability

	Diagnosed developmental disability
+	Significant impairment in adaptive behavior
+	Requires training or support similar to that required by individuals with intellectual disability
<hr/>	
=	Other developmental disability

What are the criteria for having a qualifying condition of a developmental disability other than intellectual disability (“other developmental disability”?)

1. Current diagnosis of developmental disability made by qualified professional

The individual must have been diagnosed with a developmental disability by a qualified professional, which may be a psychologist or a medical doctor, depending on the condition. The diagnosis must be current (within the last three years.) Developmental disabilities other than

intellectual disability are not based on IQ. **Developmental disabilities other than intellectual disability may include, but are not limited to:**

- Cerebral palsy
- Down syndrome
- Fetal alcohol effects (FAE)
- Fetal alcohol syndrome (FAS)
- Other fetal neurological disorders (lead, drugs, disease)
- Acquired brain injury (ABI)
- Traumatic brain injury (TBI)
- Epilepsy
- Autism spectrum disorders (DSM V)
- Autism, Asperger's, Pervasive developmental disorder not otherwise specified (DSM IV)
- Rett's syndrome
- Fragile X syndrome
- Tourette's syndrome
- Prader-Willi syndrome
- Klinefelter's syndrome

2. Began in childhood (before age 22)

To qualify for developmental disability services as an adult, it is not enough to show that the individual has a current diagnosis of a developmental disability. The individual must also show that the diagnosed developmental disability “manifested during the developmental period.” For developmental disabilities other than intellectual disability, the developmental period means prior to age 22. The individual must show that the developmental disability began before her 22nd birthday.

3. Originates (started) in the brain

Developmental disabilities other than intellectual disability must be neurologically disabling conditions that began in and directly affect the brain. Purely physical disabilities – disabilities that affect only the body, and do not originate in or affect the brain – do not qualify.

4. Expected to last indefinitely

The developmental disability must appear to be permanent and not temporary, in the opinion of a qualified professional.

5. Significant impairment in adaptive behavior

The developmental disability constitutes a “significant impairment” in the individual’s adaptive behavior, as determined by the individual’s adaptive behavior test scores. This requirement is discussed further in Part 3.

6. Requires training or support similar to that required by individuals with intellectual disability

Because of the developmental disability, the individual needs the same types of training and support that people with intellectual disability need. This is determined by the individual's adaptive behavior test scores, as discussed further in Part 3.

Note: The criteria for whether or not a person "requires training or support similar to that required by individuals with intellectual disability" are different than the criteria for whether or not a person has a "significant impairment in adaptive behavior." Both determinations are based solely on adaptive behavior test scores, but the specific scores needed to meet the two standards are different. The criteria for meeting both of these standards are discussed further in Part 3.

Part
3

PART THREE: ADAPTIVE BEHAVIOR

What is adaptive behavior?

The term “adaptive behavior” refers to a person’s general life skills. Adaptive behavior is the ability to live independently, safely, and appropriately at home, at work, and in the community. Some other terms for adaptive behavior are:

- Adaptive functioning
- Daily living skills
- Areas of major life activity
- Ability to function
- Everyday living skills

What are some examples of adaptive behaviors?

Adaptive behaviors include the skills and abilities that are expected of an individual in the individual’s age and social group. Some examples are walking (mobility,) talking (communication,) getting dressed and toileting (self-care,) going to school or work (community use,) and making choices (self-direction.)

How is adaptive behavior measured?

To measure adaptive behavior, a qualified professional (usually a psychologist) administers a standardized adaptive behavior test. Most adaptive behavior tests do not require the individual to actually demonstrate his or her skills. Rather, the evaluator gets information from people who know the individual and are familiar with his or her abilities and challenges. These people are referred to as the “reporters” for the adaptive evaluation. The evaluator may interview the reporter(s), or may ask them to complete a standardized survey or checklist. The evaluator uses the information provided by the reporter(s) to calculate the individual’s level of adaptive

functioning. The evaluator assigns an overall (composite) adaptive behavior score, and scores for various categories and subcategories of adaptive behavior.

The four most common adaptive behavior tests used for determining eligibility in Oregon are:

- Adaptive Behavior Assessment System (ABAS)
- Adaptive Behavior Evaluation Scale (ABES) – similar to the ABAS, but used only for children
- Vineland Adaptive Behavior Scale
- Scales of Independent Behavior-Revised (SIB-R)

Other adaptive behavior assessments may be used to determine eligibility with the approval of ODDS.

What categories and subcategories of adaptive behavior do the most common tests evaluate and score?

Although all the adaptive behavior tests measure and score similar types of adaptive behaviors, the tests differ somewhat in the way these behaviors are categorized and scored. For all the adaptive behavior tests, both composite scores and domain scores can be used to establish eligibility.

This chart shows the specific types of adaptive behaviors measured by each test, and how those adaptive behaviors are categorized and subcategorized.

Comparison of common adaptive behavior tests

Comparison of common adaptive behavior tests		
ABAS/ABES	Vineland	SIB-R
Social Domain : <u>Skill Areas:</u> -Social Skills -Leisure Skills	Socialization Domain: <u>Subdomains/V-Scales:*</u> -Interpersonal Relationships -Play & Leisure Time -Coping Skills	Social Interaction & Communication Skills Domain: <u>Subscales:*</u> -Social Interaction -Language Comprehension -Language Expression
Conceptual Domain: <u>Skill Areas</u> -Communication Skills -Functional Academics	Communication Domain: <u>Subdomains/V-Scales:*</u> -Receptive -Expressive	Community Living Skills Domain: <u>Subscales:*</u> -Time & Punctuality

-Self-Direction	-Written	-Money & Value -Work Skills -Home/Community Orientation
Practical Domain: <u>Skill Areas:</u> -Self-Care -Home or School Living -Community Use -Health & Safety -Work	Daily Living Skills Domain: <u>Subdomains/V-Scales:*</u> -Personal -Domestic -Community	Personal Living Skills Domain: <u>Subscales:*</u> -Eating & Meal Prep -Toileting/Dressing -Personal Self-Care -Domestic Skills
	Motor Domain <u>Subdomains/V-Scales:*</u> -Gross -Fine	Motor Skills Domain <u>Subscales:*</u> -Gross Motor -Fine Motor

*Vineland subdomain/v-scale scores and SIB-R subscale scores are not considered in determining eligibility. For the Vineland and SIB-R, only the composite and domain scores are considered.

For each test, there are subcategories of adaptive behavior grouped under each domain.

- ABAS and ABES: domain subcategories are called “skill areas.”
ABES and ABAS skill area scores can be considered in determining eligibility.
- Vineland: domain subcategories are called “subdomains” or “v-scale” scores.
Vineland subdomain/v-scale scores are not considered in determining eligibility.
- SIB-R, the domain subcategories are called “subscales.”
SIB-R subscale scores are not considered in determining eligibility.

What is a “significant impairment in adaptive behavior”?

A person who has a significant impairment in adaptive behavior has significant challenges in his or her ability to accomplish basic life activities. Whether or not an individual is considered to have a significant impairment in adaptive functioning depends solely on the individual’s scores on a standardized adaptive behavior test.

“Significant impairment in adaptive behavior” means that the individual meets one of the following criteria:

- “Composite” (overall) adaptive behavior score is two or more standard deviations below the norm.

OR

- At least two “domain” scores are two or more standard deviations below the norm.

OR

- At least two “skilled area” scores are two or more standard deviations below the norm (applies only to the ABAS and ABES adaptive behavior tests)

What does it mean to score two or more standard deviations below the norm?

Often, the norm is 100 (meaning that 100 is the average score for a particular test or evaluation,) and the standard deviation is 15 points. If the norm is 100 and the standard deviation is 15, then a score of 85 is one standard deviation below the norm (100 minus 15 = 85,) and a score of 70 is two standard deviations below the norm (100 minus 15 minus another 15 = 70.)

What is a norm?

The “norm” represents the average, or mean, score for a particular test or evaluation.

What is a standard deviation?

A standard deviation is a way of measuring how far from average a person’s performance is.

Directly related to the intellectual disability or other developmental disability.

For the significant impairment in adaptive functioning to count for eligibility, a qualified professional must say that the significant impairment is “directly related” to the intellectual or other developmental disability.

Not primarily caused by another condition.

The qualified professional must also say that the significant impairment is not primarily caused by something other than the intellectual or developmental disability. Other possible causes include, but are not limited to: mental or emotional disorders, sensory impairments (for example, being blind or deaf,) substance abuse, personality disorders, learning disability, and ADHD.

If the individual has other co-occurring conditions besides intellectual or developmental disability, these other conditions can’t be the primary cause of the individual’s adaptive behavior challenges.

Note: The eligibility rule doesn’t say that the intellectual or developmental disability must be the primary cause of the significant impairment in adaptive behavior. The rule just says that something else *can’t* be the primary cause. If the individual’s significant impairment in adaptive functioning is directly related to more than one condition, the individual can still qualify as long as some other condition is not the primary cause.

What does it mean for an individual with a developmental disability other than intellectual disability to “require training or support similar to that required by individuals with intellectual disability?”

Developmental disability services were historically reserved for people with intellectual disability. Over time, service systems expanded to serve people with other developmental disabilities such as autism spectrum disorders, traumatic brain injury, etc. People with these disabilities could have average or high IQs, but might still need help in many areas of life. Service programs needed some way of deciding whether or not people with these disabilities should qualify for the services that had previously been reserved for people with intellectual disability. Oregon decided to adopt the standard that people with developmental disabilities other than intellectual disability must “require training or support similar to that required by individual with intellectual disability.”

Whether or not an individual is considered to require training or support similar to that required by individuals with intellectual disability depends solely on the individual’s scores on a standardized adaptive behavior test. Under the Oregon developmental disability eligibility rules, **“requires training or support similar to individuals with intellectual disability” means:**

- The individual has a composite (overall) adaptive behavior score that is two or more standard deviations below the norm.

OR

- The individual has at least one domain score that is two or more standard deviations below the norm.

What does it mean to score two or more standard deviations below the norm?

Often, the norm is 100 (meaning that 100 is the average score for a particular test or evaluation,) and the standard deviation is 15 points. If the norm is 100 and the standard deviation is 15, then a score of 85 is one standard deviation below the norm (100 minus 15 = 85,) and a score of 70 is two standard deviations below the norm (100 minus 15 minus another 15 = 70.)

What is a norm?
The “norm” represents the average, or mean, score for a particular test or evaluation.

What is a standard deviation?
A standard deviation is a way of measuring how far from average a person’s performance is.

What scores are “two or more standard deviations below the norm” on the four most commonly used adaptive behavior tests?

For all **composite scores and domain scores**, a score of **70 or lower** is two or more standard deviations below the norm. (The mean/norm is 100, and the standard deviation is 15.)

For the **ABAS and ABES skill area scores**, a score of **4 or lower** is two or more standard deviations below the norm. (The mean/norm is 10, and the standard deviation is 3.)

Part
4

PART FOUR: COMMON PROBLEMS THAT ARISE IN ESTABLISHING ELIGIBILITY, AND WHAT TO DO ABOUT THEM

Issues related to intellectual disability

ISSUE: No IQ test scores from childhood.

An adult whose current IQ is 75 or below can still qualify for developmental disability services based on intellectual disability even if she does not have IQ scores from childhood to prove that her low IQ began in childhood. The eligibility rule says that in the absence of data from childhood, current data can be used as long as there is no evidence of:

- head trauma (after 22nd birthday)
- mental or emotional disorder
- history of substance abuse

Rule: OAR 411-320-0080(10)(a).

WHAT YOU CAN DO:

If none of these circumstances applies, then you can argue at the informal conference or during the hearing itself that the eligibility decision must be based on current IQ scores.

If there is evidence of a head trauma after the 22nd birthday, a mental or emotional disorder, or substance abuse, then request that ODDS get “a clinical impression by a qualified professional regarding how the individual’s functioning may be impacted by the identified condition.” A psychologist who has evaluated or treated the individual should be asked to answer two questions: (1) Is the individual’s current low intellectual functioning directly related to an intellectual disability? (2) Is the individual’s current low intellectual functioning primarily related to [head trauma] [significant mental or emotional disorder] [substance abuse]?

Note that these questions are based on the exact language of the eligibility rule. Be sure that these are the precise questions the qualified professional will be asked to answer.

Rule: OAR 411-320-0080(10)(b).

ISSUE: The individual's IQ scores were measured at various points in her life. Some, but not all, of her full-scale IQ scores were 75 or below.

A single full-scale IQ score slightly above 75 should not defeat eligibility, if there are other full-scale IQ scores of 75 or below.

WHAT YOU CAN DO:

If the individual's current IQ has been measured above 75, but prior testing has always produced IQ scores of 75 or below, try to arrange for a new psychological evaluation with IQ testing. See "How to Get a New or Updated Psychological Evaluation" at the end of this chapter.

Issues related to other developmental disabilities

ISSUE: The individual has been diagnosed with a developmental disability, but does not have records from childhood (prior to age 22) to prove when the disability began.

WHAT YOU CAN DO:

- Help identify any potential sources of records.

Ask the CDDP to contact the Claimant's family or close friends from childhood to find out whether they know of sources of information or records from the Claimant's childhood, such as medical providers, therapists, and schools. The Claimant will need to give permission to the CDDP to contact these people and to seek records from any doctors, therapists or schools they identify.

- Ask ODDS to rely on the current diagnosis.

The eligibility rule says that in the absence of data from childhood, current data can be used as long as there is no evidence of:

- Head trauma (after 22nd birthday)
- Mental or emotional disorder
- History of substance abuse

Rule: OAR 411-320-0080(10)(a).

If none of these circumstances applies, then you can argue at the informal conference or during the hearing itself that the eligibility decision must be based on current diagnosis. If necessary, help the Claimant get an opinion from a qualified professional about whether the diagnosed condition began during the Claimant's childhood. Ask the qualified professional to explain why s/he believes this is the case.

If there is evidence of a head trauma after the 22nd birthday, a mental or emotional disorder, or substance abuse, then request that ODDS get "a clinical impression by a qualified professional regarding how the individual's functioning may be impacted by the identified condition."

A qualified professional who has evaluated or treated the individual should be asked to answer two questions: (1) Is the individual's current low intellectual functioning directly related to an intellectual disability? (2) Is the individual's current low intellectual functioning primarily related to [head trauma] [significant mental or emotional disorder] [substance abuse]?

Note that these questions are based on the exact language of the eligibility rule. Be sure that these are the precise questions the qualified professional will be asked to answer. Rule: OAR 411-320-0080(10)(b).

ISSUE: The individual has signs or symptoms of fetal alcohol syndrome (FAS) or fetal alcohol effects (FAE), but has never been fully evaluated for these conditions.

A diagnosis of fetal alcohol syndrome or fetal alcohol effects typically requires a history of alcohol or drug use by the biological mother during pregnancy. Sometimes a person shows signs of having FAS or FAE, but has not been fully evaluated for these conditions because of a lack of information about whether the person's biological mother used alcohol or drugs during pregnancy.

WHAT YOU CAN DO: If there are records from the Claimant's biological mother's pregnancy, the Claimant's birth, or the Claimant's adoption (if applicable) that mention drug or alcohol use during pregnancy, be sure these records have been reviewed by a qualified professional. Evidence of drug or alcohol use during pregnancy can also include statements from people who knew the Claimant's biological mother during her pregnancy. Some examples may be her current or former partner or spouse, her parents or siblings, or her current or former in-laws. If you can identify someone who knows about the Claimant's biological mother's use of alcohol or drugs during pregnancy, get a written statement from this person, or ask the qualified professional to talk to him or her. Then ask the qualified professional to evaluate the Claimant for FAS or FAE in light of the new records or information provided.

Issues related to adaptive behavior

ISSUE: The individual's adaptive behavior test scores may not be a reliable or accurate indicator of the individual's functioning.

Adaptive behavior test scores are only as accurate as the information given by the reporter(s). In some cases, adaptive behavior test scores may not provide a complete and accurate picture of the individual's functioning. Possible problems include:

- **There was only one reporter.** An adaptive behavior test that includes information from various people who know the individual in different contexts may provide a more complete picture than scores based only on information from a single reporter. If there was only one reporter, are there other people who could also be questioned about the individual's functioning, such as relatives, teachers, or service providers?
- **The reporter(s) were not the people who know the individual best.** Are there other potential reporters who have known the individual longer, or who currently spend more time with the individual?
- **The individual was a self-reporter.** Individuals may have difficulty seeing their own limitations in adaptive behavior, and may be inclined to rate their own abilities higher than they actually are.
- **The reporter may have difficulty recognizing the extent of the individual's deficits.** It can be natural to want to portray someone we love in the best possible light, and to focus on their strengths rather than their weaknesses. For this reason, an individual's parent or romantic partner may overestimate or overstate the individual's abilities. This is sometimes referred to as being "lovingly optimistic" about a loved one's abilities. In addition, when the individual lives in a highly structured environment where she receives ongoing support (whether in a residential program or in the family home), it may be difficult to perceive how much the individual could do independently, without the benefit of the structured environment and the presence of supports.
- **The reporter did not feel free to speak frankly about the individual's adaptive behavior challenges during the interview, because the individual was also present.** It is very awkward to discuss a person's challenges and limitations when the person is listening to the conversation. A reporter may gloss over or downplay an individual's challenges if the individual is present in the room during the interview.
- **The reporter has cognitive limitations or mental health conditions that make it difficult for her to understand the questions being asked or provide accurate information about the individual's functioning.** A reporter may have her own

disabilities that affect how well she can accurately describe the individual's functioning, especially if she has been asked to read and fill out an adaptive behavior survey form.

WHAT YOU CAN DO:

Arrange for a new or updated adaptive evaluation with a different reporter or with additional reporters who can be more objective or can more accurately describe the individual's functioning. It may be possible to get the same evaluator to do an updated adaptive evaluation with a new reporter, or it may be necessary to start from scratch with a different psychologist. See "How to Get a New or Updated Psychological Evaluation" at the end of this chapter.

ISSUE: There is a significant discrepancy between the individual's low intellectual functioning (IQ) and her higher adaptive functioning scores.

Typically, for people with intellectual disability, adaptive functioning roughly correlates with intellectual functioning (IQ). In other words, an individual whose IQ is two or more standard deviations below the norm is statistically likely to also have adaptive functioning scores that are approximately two or more standard deviations below the norm. If a person has IQ scores of 70 or below, but adaptive behavior scores that are much higher than 70, this is a red flag that the adaptive behavior scores may not be an accurate or reliable indicator of the individual's functioning.

WHAT YOU CAN DO:

Consider whether there is a possible explanation why the adaptive behavior test scores are not a reliable or accurate indicator of the individual's functioning. Contact the psychologist who performed the evaluation. Explain why you believe the adaptive behavior scores may be unreliable. Ask whether the psychologist feels confident that the adaptive behavior scores are a reliable and accurate indicator of the individual's adaptive functioning, given the individual's low IQ.

If the psychologist is confident the adaptive behavior scores are reliable, but you have reason to believe they are unreliable, arrange for a new evaluation with another psychologist. Ask the new psychologist to interview different or additional reporters. See "How to Get a New or Updated Psychological Evaluation" at the end of this chapter.

If the psychologist is not confident in the reliability of the scores, ask the psychologist to put his or her concerns in writing and submit that information to ODDS. Then ask ODDS to refer the Claimant back to the same psychologist for an updated adaptive evaluation, or assist the Claimant

in obtaining a new evaluation. See “How to Get a New or Updated Psychological Evaluation” at the end of this chapter.

ISSUE: The adaptive behavior test administered to the Claimant may not be the most appropriate test for determining whether the Claimant has a significant impairment in adaptive behavior.

Claimant has challenges with two or more types of adaptive behavior that are measured and scored by the ABAS/ABES “skill areas” (see chart on pages 18-19) but the Claimant was assessed with a Vineland or SIB-R.

Remember that ABAS/ABES “skill area” scores can be used to show that a person has a significant impairment in adaptive behavior, but the Vineland subdomain/v-scale scores and the SIB-R subscale scores are not considered for this purpose.

WHAT YOU CAN DO: Review the ABAS/ABES skill areas listed in the chart on pages 18-19. If you believe the Claimant has significant challenges in two or more of these areas, try to arrange for the Claimant to get a new adaptive behavior evaluation from a psychologist who can administer the ABAS (for adults) or ABES (for children.) See “How to Get a New or Updated Psychological Evaluation” at the end of this chapter.

Claimant has impaired motor skills, but Claimant was assessed with an ABAS or ABES, which do not measure motor skills impairments.

WHAT YOU CAN DO: Try to arrange for the Claimant to get a new adaptive behavior evaluation from a psychologist who can administer either the Vineland or the SIB-R. See “How to Get a New or Updated Psychological Evaluation” at the end of this chapter.

Claimant has challenges with both social interaction and communication skills, but Claimant was assessed with a SIB-R.

The Claimant can prove she has “as significant impairment in adaptive functioning” if she has qualifying scores (two or more standard deviations below the norm) in two domains or skill areas. On the SIB-R, social interaction and communication skills are grouped into a single domain, whereas on the ABAS/ABES and Vineland, there are two separate skill areas or domains for social functioning and communication. (The ABAS/ABES has skill areas called “social skills” and “communication skills,” and the Vineland has a Socialization domain and a Communication domain.)

WHAT YOU CAN DO: Try to arrange for the Claimant to get a new adaptive behavior evaluation from a psychologist who can administer an ABAS/ABES or Vineland. See “How to Get a New or Updated Psychological Evaluation” at the end of this chapter.

WHAT YOU CAN DO:

After reviewing the chart on pages 18-19, consider whether the adaptive behavior test administered to the Claimant is the most appropriate test for determining whether the Claimant has a significant impairment in adaptive functioning. If not, arrange for a new adaptive evaluation in which a different adaptive behavior test will be administered. See “How to Get a New or Updated Psychological Evaluation” at the end of this chapter. If necessary, argue at the pre-hearing conference or the hearing itself that the individual has not been given an opportunity to provide evidence that she meets the eligibility criteria. Argue that she may have scores that are two or more standard deviations below the norm in a particular area of adaptive behavior in which she is significantly impaired, but she can’t prove it because this area was not specifically evaluated.

ISSUE: The individual has a significant impairment in adaptive behavior based on the results of one current adaptive test, but not another.

The developmental disability eligibility rule does not require the use of any particular standardized adaptive test. It also does not require that the individual have qualifying scores on every test ever administered to the individual. Rather, the rule says that the individual must have qualifying scores “as indicated on a standardized adaptive test.” If an individual has qualifying scores on a current standardized adaptive test administered within the last three years by a qualified professional, the CDDP and SPD must have a good reason to ignore or give less weight to a test with non-qualifying scores.

WHAT YOU CAN DO:

Consider whether there is a possible explanation why the higher adaptive behavior test scores are not a reliable or accurate indicator of the individual’s functioning. If so, argue at the pre-hearing conference or the hearing itself that the test with higher scores should be given less weight.

Also, you can argue at the hearing that the eligibility rule only requires qualifying adaptive behavior test scores from “a” standardized adaptive behavior test. Point out that the rule does not say that another test with non-qualifying scores defeats eligibility.

ISSUE: The individual has a significant impairment in adaptive functioning, but the CDDP says it is not directly related to the intellectual or other developmental disability. The CDDP says that another condition is the primary cause of the individual’s significant impairment in adaptive functioning.

WHAT YOU CAN DO:

These are determinations that should be made by qualified professionals, not by the CDDP or ODDS. Carefully review the evaluation report(s) to see whether a qualified professional (usually a psychologist) has explicitly stated that:

- The individual’s adaptive behavior impairment is not directly related to an intellectual or other developmental disability.

OR

- Some other condition is the primary cause of the individual’s adaptive behavior impairment.

If a qualified professional has stated one of the above, but you believe the psychologist is misinformed, arrange for a new evaluation by another psychologist. See “How to Get a New or Updated Psychological Evaluation” at the end of this chapter.

If no qualified professional has stated either of the above, argue at the informal conference or the hearing itself that ODDS must obtain the opinion of a qualified professional before it can deny eligibility on this basis.

How to get a new or updated psychological evaluation

It may be difficult or impossible to show that the Claimant is eligible without a new or updated psychological evaluation. It may not be necessary to get an entirely new evaluation – it may be enough to request certain additional information or limited additional testing from a psychologist who has already evaluated the Claimant. Possible sources of new or updated evaluations are:

1. Current treating psychologist

- If the Claimant has an established relationship with a psychologist, s/he may be willing to evaluate the Claimant. Check with the psychologist about whether the requested evaluation will be covered by the Claimant’s health insurance. It is more likely to be covered if one purpose of the evaluation is to aid the psychologist in diagnosing or treating the Claimant (vs. if the sole purpose is to help the Claimant establish eligibility for services).

2. School psychologist

- A school psychologist may be able to evaluate a child who is applying for or enrolled in special education services.

3. Private psychologist.

- Evaluation by a private psychologist is an option if the Claimant or the Claimant's family can afford it. Disability Rights Oregon may be able to refer you to a psychologist or to an organization that can help you locate a psychologist.

4. SPD referral

- SPD may be willing to refer the Claimant for new or additional evaluation. This generally means the evaluation will be funded by the state Division of Medical Assistance Programs (DMAP). Because of the cost of additional evaluations, you may need to convince SPD that a previous evaluation is incomplete or potentially unreliable for some reason. (For example, see p. 25 for a list of circumstances in which adaptive behavior scores may be unreliable.)

APPENDIX

Form: Statement of Good Cause for Late Hearing Request or Late Request for Continuing Services

Statement of Good Cause for Late Hearing Request or Late Request for Continuing Services

Complete this form and submit it to the CDDP Eligibility Specialist or to the ODDS Hearing Representative. Keep a copy for your records.

Name of Claimant: _____

Name and phone number of person completing form, if other than claimant:

This statement explains why Claimant missed the deadline for (check one or both boxes as applicable):

requesting a hearing

requesting continuing services pending a hearing decision

“Good cause” is defined to mean any of the following:

- an excusable mistake
- surprise
- excusable neglect (**including neglect due to a significant cognitive or health issue**)
- circumstances beyond the control of the Claimant

- relying on the statement of an employee of the Department of Human Services or an adverse provider relating to procedural requirements

[example - being misinformed by a DHS employee or CDDP employee about how or when to request a hearing or continuing services]

- fraud, misrepresentation, or other misconduct by a DHS employee or an adverse party

Rules: OAR 411-001-0520(1)(b); OAR 411-318-0005(22); OAR 411-318-0025(2)(c); OAR 411-318-0025(3)(d)

Please explain the Claimant's good cause for missing the deadline to request a hearing, or the deadline to request continuing services. Continue on another page if needed.
