



# OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES ELIGIBILITY GUIDELINES

## *Determining Eligibility for Services: Substantial Handicap and Developmental Disability*

### **SCOPE OF GUIDELINES**

This document offers clinical and procedural guidance about determining and reviewing basic eligibility for the Office for People With Developmental Disabilities (OPWDD) supports and services. A basic determination of eligibility for developmental disability as defined in Mental Hygiene Law (MHL) 1.03(22) does not mean that the person is eligible for every type of OPWDD service. Additionally, the person seeking OPWDD eligibility must be a New York State resident or intend to reside in New York State at the time services are delivered.

Some OPWDD supports and services have additional eligibility criteria. For example, Intermediate Care Facility (ICF) settings and Home and Community-Based Services (HCBS) waiver programs require an additional level-of-care determination, and individuals are eligible for HCBS services only when they reside in qualifying living arrangements. Reviews and determinations based on these and other additional criteria associated with eligibility for specific OPWDD services are not part of the initial eligibility process and, therefore, not a topic of these guidelines.

These guidelines also provide updated information about:

- Determining eligibility when it is unclear whether the presence of intellectual or developmental disability can be verified;
- Determining eligibility when historical clinical records and related materials have not been provided for review, or cannot be obtained for review;
- Criteria to determine the presence of a “substantial handicap;”
- The nature of “neurological impairment” as a qualifying condition;
- Clinical practices related to the diagnosis of Autism Spectrum Disorder (ASD);
- Age parameters and criteria related to provisional eligibility; and
- Establishment of procedures related to the review of individuals who have previously been found eligible, or who have received services from OPWDD in the past.

# Contents

<b>SCOPE OF GUIDELINES</b> .....	1
<b>SECTION I: DEFINITION OF DEVELOPMENTAL DISABILITY</b> .....	3
<b>SECTION II: PROFESSIONAL PRINCIPLES</b> .....	4
A. Assessment and Diagnosis.....	4
B. Need for Complete Clinical Information.....	4
C. Required Documentation.....	5
D. Practitioners Qualified to Conduct Standardized Testing.....	5
E. Need to Use Prevailing Diagnostic Nomenclatures and Accepted Diagnostic Practices.....	6
<b>SECTION III: FUNCTIONAL LIMITATIONS, INTELLECTUAL AND ADAPTIVE FUNCTIONING AND SUBSTANTIAL HANDICAP</b> .....	8
A. Functional Limitations.....	8
B. Assessing Intellectual Functioning and Adaptive Functioning.....	8
C. Using Scores on Adaptive Behavior Measures to Establish Necessary Functional Limitations.....	9
D. Substantial Functional Limitations and Qualifying Conditions.....	9
E. Appropriate Standardized Assessment Measures.....	10
F. Establishing Substantial Functional Limitations for Provisionally Eligible Children.....	12
<b>SECTION IV: DDRO REVIEW PROCESS</b> .....	14
A. Established Review Procedures.....	14
i. Eligibility Application.....	14
ii. 1 <sup>st</sup> Step Review.....	15
iii. 2 <sup>nd</sup> Step Review.....	16
iv. 3 <sup>rd</sup> Step Review.....	16
v. Provisional Eligibility for Children Through Age 7.....	17
vi. Maintaining Eligibility Records.....	17
B. Redeterminations of Eligibility.....	18
i. Provisional Eligibility.....	18
ii. New Information.....	18
iii. Significant Break in Service.....	19
iv. Eligibility Status and Limited Services/Service Requests.....	19
<b>SECTION V: FACTORS THAT PROMPT SECOND STEP REVIEW</b> .....	21
<b>SECTION VI: REFERENCES</b> .....	23
<b>Appendix A: Application Checklist for Determination of OPWDD Eligibility</b> .....	24

## **SECTION I: DEFINITION OF DEVELOPMENTAL DISABILITY**

Section 1.03(22) of the New York State Mental Hygiene Law is the legal basis for OPWDD's eligibility determination and defines Developmental Disability.

"Developmental disability" means a disability of a person which:

- (a) (1) is attributable to intellectual disability, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, Prader-Willi syndrome or autism;
  - (2) is attributable to any other condition of a person found to be closely related to intellectual disability because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of intellectually disabled persons or requires treatment and services similar to those required for such person; or
  - (3) is attributable to dyslexia resulting from a disability described in subparagraph one or two of this paragraph;
- (b) originates before such person attains age twenty-two; and
  - (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**

At least one federal agency and several professional associations provide clarification and support for the interpretation of this section of the law. These include the:

- Administration on Intellectual and Developmental Disabilities (AIDD);
- American Association on Intellectual and Developmental Disabilities (AAIDD);
- American Psychiatric Association (APA); and
- American Psychological Association (APA).

### **A. Assessment and Diagnosis**

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

A valid diagnosis of a qualifying condition named in MHL 1.03(22)(a)(1) is required; or alternatively, for people seeking eligibility based on a related condition, as defined in 1.03(22)(a)(2), a diagnosis of a specific condition is required.

Other requirements include:

- onset of the condition prior to the person turning age 22;
- likelihood of indefinite continuation of the condition and the associated substantial handicap; and
- presence of substantial functional limitations which can be clearly attributed to the identified qualifying diagnosis.

Combined, these factors confirm OPWDD eligibility.

### **B. Need for Complete Clinical Information**

**Eligibility determinations must be made based on complete and sufficient clinical information.** Such information is necessary to determine whether the person meets the requirements established in MHL 1.03(22). This information must include:

- **History** and **presence** of developmental disability with an onset prior to the age of 22;
- **Medical, medical specialty, or health information** identifying the nature and diagnosis of a condition resulting in neurological impairment, or other physical/medical condition associated with a qualifying condition;
- **Standardized intelligence testing** as a component of a comprehensive assessment of the clinical condition; and
- **Standardized measures of adaptive functioning** that can detect substantial handicaps or functional limitations that can be attributed to the identified condition.

It is the responsibility of the referring party to provide or arrange for the provision of such information. A Developmental Disabilities Regional Office (DDRO) may assist referring parties in securing such information and may request additional information as necessary

to determine whether a person is OPWDD eligible.

### **C. Required Documentation**

In most cases, the DDRO will need the following information to determine whether someone is eligible for OPWDD services:

1. Medical or specialty reports (for example, a neurological or genetic testing report), including health status and diagnostic findings, to support a qualifying diagnosis other than intellectual disability. For persons qualifying due to intellectual disability only, a recent medical summary report may be provided, if available.
2. A psychological report that includes a comprehensive assessment of intellectual functioning with the reporting of intelligence testing scores (including subscale, index, and full-scale scores) and a standardized assessment of adaptive behavior with reporting of composite, domain, and sub-domain/skill area summary scores. For people with IQ scores consistently below 60, adaptive assessment may be based on qualitative review via interview with care-providers, review of records, and direct observation.
3. A social/developmental history, psychosocial report, or other background report that provides evidence that the person met the criteria before age 22 years. Social/developmental information is still needed if the person is a child or adolescent.
4. A full report or other summaries of all contemporary diagnoses or classifications of health, including physical, developmental, or psychiatric conditions that are relevant to the determination of eligibility.
5. In the case of an autism spectrum disorder (ASD), a report(s) constituting a comprehensive evaluation for the ASD diagnosis is required.

**In some cases, the DDRO staff may not be able to determine whether someone meets the eligibility requirements based on the reports and information that is provided. In those cases, the DDRO may request further information or different reports, and may either recommend where these tests be conducted or arrange for them to be conducted.**

### **D. Practitioners Qualified to Conduct Standardized Testing**

OPWDD relies upon valid results from standardized testing when making an eligibility determination, therefore, such testing must be performed by a qualified practitioner. Professionals who are “qualified practitioners” and who may **administer and interpret** standardized measures of intelligence and adaptive behavior are defined as:

Persons with **directly relevant** Master’s degrees, 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 the most current edition of the **AERA/APA/NCME (2014) Standards for Educational and Psychological Testing**, for the use and interpretation of individual test

results.

Qualified practitioners must practice in accordance with current evidence-based practices and clinical practice guidelines established for their profession. Practitioners are trained to appraise information obtained using 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; and
- Factors that increase or decrease the validity and reliability of test and assessment results; and
- The importance of integrating and interpreting test results in the context of previously obtained results, clinical history, and collateral information.

These factors must be considered when deciding whether eligibility criteria for intellectual or adaptive behavioral functioning are met.

Qualified practitioners trained and experienced in sub-specialty areas, and whose scope of practice includes formulating a diagnostic impression, are encouraged to perform or coordinate differential diagnostic assessments (i.e., differentiating one disorder from another that may have some similar presenting characteristics), rather than exclusively ruling in or ruling out single specific conditions. Such assessments may include testing limits, identifying and evaluating significant or characteristic discrepancies between skill and performance measures, and utilizing multiple clinical and testing measures to evaluate the presence of a concurrent or pre-existing disorder.

Reports prepared by Master's-level unlicensed or uncertified examiners who are qualified practitioners, which include diagnostic statements, must be supervised and co-signed by a licensed practitioner qualified to assess and diagnose the relevant condition, and who has been involved in the assessment process. All practitioners may only perform work that is within their scope of practice and based upon their education and training.

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

Efforts must be made to obtain historical records (such as school, medical, psychiatric, mental health/psychological, or other disability records), as opposed to presuming that such records no longer exist. DDROs may require documentation of efforts to obtain records. In cases where records cannot be obtained, other sources of information (such as retrospective as well as current collateral information from relatives, friends, neighbors, etc.) should be considered. In addition, the nature of the person's disability, social history, culture, background, and primary or preferred language should be considered when determining whether the person meets the eligibility criteria.

#### **E. Need to Use Prevailing Diagnostic Nomenclatures and Accepted Diagnostic Practices**

**It is expected that practitioners will designate diagnostic classifications that correspond to the prevailing clinical nomenclatures at the time of the assessment**

**(e.g., the current edition of the *International Statistical Classification of Diseases established by the World Health Organization* [ICD, WHO]; the current edition of the *Diagnostic and Statistical Manual of Mental Disorders* [DSM, American Psychiatric Association]).**

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

Persons seeking OPWDD eligibility must meet the diagnostic criteria of the qualifying condition. The determination of the presence of these disorders should follow accepted clinical practice guidelines. A diagnosis may not be rendered based solely on the results obtained from screening instruments or the results of other, single evaluative measures or processes in isolation. For example, a diagnosis of autism spectrum disorder (ASD) requires a comprehensive evaluation that includes a careful review and description of early development and the emergence of ASD symptoms, current symptoms that are consistent with diagnostic criteria, personal interview/observation, collateral information from a standardized diagnostic measure, and careful differentiation from other developmental or psychiatric disorders. The report should include both the scores from standardized measures, as well as detailed description of the person.

OPWDD will scrutinize diagnostic statements that are not supported by corresponding and appropriately documented clinical and psychometric assessment findings. This scrutiny will occur regardless of whether eligibility is sought based on the presence of intellectual disability or another qualifying condition.

## **SECTION III: FUNCTIONAL LIMITATIONS, INTELLECTUAL AND ADAPTIVE FUNCTIONING AND SUBSTANTIAL HANDICAP**

### **A. Functional Limitations**

Functional limitations are generally considered to constitute a substantial handicap when they **prohibit a person from being able to function independently in daily life or when the development of functional skills related to daily living are significantly below expectations given the person's age**. 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 an assessment by using a nationally normed and validated, comprehensive, individual measure of adaptive behavior, administered and interpreted by a qualified practitioner following appropriate administration guidelines.

### **B. Assessing Intellectual Functioning and Adaptive Functioning**

Significant limitations in **general intellectual functioning** and limitations in **adaptive functioning** are determined using different kinds of tests or measures.

Significant limitations in **general intellectual functioning** are determined from the findings of one or more assessments by using a nationally normed and validated, comprehensive, individual measure of intelligence that is administered in a standardized format, in its **entirety** in accordance with standardization procedures, and interpreted by a qualified practitioner. In exceptional circumstances, non-standardized testing formats may be used, if this is documented and an appropriate rationale and justification is clearly stated. For example, directions for *nonverbal* subtests in a Wechsler IQ test may be translated into a non-English speaking person's primary language (see **Appropriate Standardized Assessment Measures**).

Significant limitations in **adaptive functioning** are determined from the findings of an assessment by using a nationally normed and validated, comprehensive, individual measure of adaptive behavior. Such functional limitations **may not be presumed** solely based on low scores on a comprehensive, individual measure of intellectual functioning. Similarly, the presence of significant limitations in adaptive behavior **does not** constitute a basis upon which presence of significantly sub-average intellectual functioning may be presumed.

**Onset of significant limitations** in adaptive behavior constituting substantial handicap, as defined in this document, must occur before the person attains age 22, to satisfy the requirements of MHL 1.03(22)(b). Onset must be verified as the presence of significant limitations in adaptive behavior prior to age 22.

### **C. Using Scores on Adaptive Behavior Measures to Establish Necessary Functional Limitations**

Functional limitations can be evaluated using one of the following three sets of criteria to establish the presence of a substantial handicap.

1. For adaptive behavior measures **that provide an overall composite score (e.g., ABAS-3, or VABS-3)**, the criterion of significance for defining substantial handicap is an overall **composite score** that is **2.0** or more standard deviations below the mean for the appropriate norming sample.
2. For adaptive behavior measures that provide composite and **domain scores (e.g. in the VABS-3 or ABAS-3)**, an alternate criterion of significance is that the majority of these domain scores lie **2.0** or more standard deviations below the mean for the appropriate norming sample (even if the composite score is not 2 or more standard deviations below the mean).
3. For adaptive behavior measures that provide composite, domain scores, and specific skill area/subdomain scores (**e.g., ABAS-3, or VABS-3**), a third criterion of significance is that the majority of adaptive skill areas/subdomain scores lie at 2.0 or more standard deviations below the mean for the appropriate norming sample (even if the composite and domain scores are not 2 or more standard deviations below the mean).

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

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

Using information gleaned from the review of records and findings from the use of standardized and normed assessments, it must be determined that significant functional limitations are not:

- due to a current acute or severe phase of a psychiatric disorder; or
- a consequence of, or better accounted for by, the person's psychiatric disorder, substance use, or substance-related disorders.

When a psychiatric or substance-related disorder is present, clinicians must consider factors such as premorbid level of adaptive functioning and level of functioning at times when the psychiatric/substance abuse symptoms are in remission to help clarify the relative impact of the comorbid conditions on the person's functional limitations.

### **D. Substantial Functional Limitations and Qualifying Conditions**

The determination should also be made that significant functional limitations are associated with, attendant to, or result from, a qualifying condition(s). For the purposes of

eligibility determinations, developmental disorders/qualifying conditions are defined as conditions that meet the criteria set forth in the Mental Hygiene Law for developmental disability.

Qualifying conditions other than those enumerated in MHL 1.03(22)(a)(1) must be similar or closely related to intellectual disability, including that they must cause or result from injury to, dysfunction, disorder, or impairment of the **Central Nervous System, i.e., the brain or spinal cord**. Conditions similar or related to intellectual disability in their effects (MHL 1.03(22)(a)(2)) include the presence of a neurological impairment or degeneration because of a disease or disorder affecting the central nervous system. To be OPWDD eligible, the person must have a qualifying condition and significant impairment in adaptive and daily functioning that is directly attributed to the qualifying condition.

#### **E. Appropriate Standardized Assessment Measures**

Standardized assessment measures that are appropriate as sources of information to be used in eligibility determinations 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).
- They are **standardized** in their mode and parameters (process) of administration and are 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.

**Updated or current evaluations of intellectual functioning and adaptive behavior must be based upon the most recent version of the instrument used.** When a new version of an existing test becomes available, older versions of that test must not be accepted if they were administered more than 12 months after the publication of the newest version.

**Examples** of appropriate **intellectual measures** include the current versions of:

- The Kaufman Assessment series;
- The Leiter International Performance Scale;
- The Stanford-Binet Intelligence Scales;
- The Wechsler series of Intelligence Scales;
- The Woodcock-Johnson Tests of Cognitive Abilities; and

- Other intelligence tests may be acceptable if they are comprehensive, structured, standardized, and have up-to-date general population norms.

Brief or partial administration of comprehensive intellectual measures may be utilized only in circumstances where **standardized administration is impossible** due to sensory disability or profound and generalized impairment of activity, and in conformance with the most current edition of the AERA/APA/NCME standards for use and interpretation of individual test results. If a person is determined to have such significant cognitive limitations that they are unable to understand or respond to the administration of comprehensive standardized tests, a clinician may use alternate assessment techniques or measures to document functioning levels and help estimate the severity of an obvious developmental disability. A description of the circumstances and rationale for such an adaptation must be included in the report.

**Findings from abbreviated measures** of intelligence (e.g., WASI or KBIT) or adaptive behavior scales will not substitute for a comprehensive assessment and will not solely be considered when determining eligibility.

**Tests or instruments assessing nonverbal intelligence** (e.g., the Leiter Scale, the Universal Nonverbal Intelligence Test, the Comprehensive Test of Nonverbal Intelligence), in combination with the Performance items of a comprehensive IQ test (with directions translated into the examinee's native language or means of communication), will be considered for people who are not proficient with the English language, who have hearing impairment, or who do not communicate through the use of oral language.

**In all other cases**, comprehensive intellectual assessment measures standardized in English that have been administered by translation into another language are not acceptable for eligibility determination purposes.

**Examples** of standardized measures that are **not considered to be comprehensive** in nature, and are not accepted include, but are not limited to:

- The Peabody Picture Vocabulary Test;
- Slosson Intelligence Test
- The Reynolds Intellectual Assessment Scales (RIAS); and
- Testing formats that project non-administered subtest scores from those that are administered.

**Examples** of appropriate comprehensive **measures of adaptive behavior include current versions of:**

- The Adaptive Behavior Assessment System (ABAS);
- The Vineland Adaptive Behavior Scales (Vineland or VABS);
- The Scales of Independent Behavior-R (Motor Skills Domain only); or
- Other adaptive behavior measures are acceptable if they are comprehensive, structured, standardized, and have up-to-date general population norms.

Adaptive behavior measures must reflect the person's typical or actual behavior, not their best or potential behavior under optimal circumstances. In general, a person's self-report should not be the only source of information gathered for the assessment, particularly

when the person has a condition(s) that may affect their current cognitive functioning or ability to provide a valid or reliable report about his/her abilities.

As with all testing, adaptive behavior measures should be *administered, scored and interpreted* by professionals trained on the use and interpretation of the measure. Such professionals must meet the education and training requirements established for each scale in the measure's respective test manual(s). For eligibility purposes, an interpretive report, completed by a qualified professional, must be submitted with all adaptive behavior assessments.

The submission of a computer-generated report based on the entry of raw scores will not be considered for the purposes of determining eligibility as such reports are not individualized. Any interpretation of the findings is not inclusive of the totality of information obtained throughout the assessment process. Therefore, while these results can be used by clinicians, clinicians must create their own reports.

#### **F. Establishing Substantial Functional Limitations for Provisionally Eligible Children**

There are circumstances when the ability to determine eligibility for services on a provisional or conditional basis has enabled OPWDD to provide supports and services to young children whose condition and/or functioning may improve significantly over time, because of specialty treatments and services. It has enabled parents of these children to receive assistance in obtaining environmental modifications, assistive equipment, and access to diagnostic assessment and treatment resources. During the period of provisional eligibility, cognitive and functional capacities may be developed or maximized to the point that the developmental disorder or apparent similar condition is no longer a source of substantial handicap.

Early identification and intervention can be critical to achieving the best outcomes for youth with Intellectual or Developmental Disability (I/DD). However, establishing a definitive diagnosis, prognosis, and likelihood of future level of impairment may be challenging due to individual differences in developmental trajectories and response to available services. Provisional eligibility runs from a child's birth through age 7. Provisional eligibility extends the available time to complete school-based assessments and affords OPWDD time to review and consider whether the person meets the eligibility requirements. On the child's 8<sup>th</sup> birthday, they must meet the full eligibility criteria to continue receiving OPWDD supports and services.

**DDROs may grant provisional eligibility for children birth through age 7. However, if a child meets the full eligibility criteria before age 8, they may be granted full eligibility.**

Psychometric assessment is the primary method used by OPWDD in establishing the presence of **marked limitation confirming substantial functional limitations**. Qualified clinicians must be knowledgeable in the use of differential diagnostic measures applicable within the **full range of referral ages**.

For children from birth through age 7, and consistent with Part 200.1(mm)(1) of the NYS Education Law, substantial functional limitation associated with global or specific

developmental delays is defined as:

- 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.

**For children from birth through 7 years**, psychometric and developmental measures that derive a developmental quotient or mental age **may** be accepted as **suitable and appropriate** means to confirm functional or intellectual delays or disability.

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

- Battelle Developmental Inventory (BDI);
- Bayley Scales of Infant Development;
- Differential Ability Scales (DAS);
- Infant-Toddler Developmental Assessment (IDA);
- Kaufman Assessment Battery for Children;
- Stanford Binet Intelligence Scales;
- Wechsler series of intelligence Scales; or
- Woodcock-Johnson Tests of Cognitive Ability.

**For children aged 8 years and older**, the criteria to determine whether a person meets eligibility requirements for OPWDD services shall be the same as those set forth elsewhere in this document. That is, it is necessary to confirm a specific qualifying diagnosis that results in a substantial handicap originating in the developmental period, with an expectation of indefinite continuation.

## **SECTION IV: DDRO REVIEW PROCESS**

### **A. Established Review Procedures**

OPWDD has established assessment and review procedures to determine the presence of a developmental disability and the resulting substantial handicap. These procedures are designed to provide equitable assessments and fair and objective reviews of cases. This process is known as the three-step process or eligibility determination process, outlined below.

At any point in the eligibility determination process, **designated DDRO staff may request additional information or further assessment of the person to determine eligibility.** Staff may also request further assessment by an independent, qualified practitioner, or may conduct assessments of the person to assure accuracy within the process. Such requests for additional information will be made to the person(s) or agency who are seeking services.

#### **1. Eligibility Application**

To have eligibility established with OPWDD, the person must begin the process of applying for eligibility. This process includes:

- a) The person interested in receiving OPWDD services contacting the Front Door at the DDRFO to show their interest in getting services.
- b) The Front Door connecting the person with a Care Coordination Organization (CCO) or service access agency.
- c) The CCO working with the person to gather all documents for an eligibility determination. This includes:
  - Required documents:
    - Cognitive testing;
    - Adaptive assessments;
    - Medical documentation;
    - Physical or Medical summary (completed in the last 12 months);
    - Social history (completed in the last 12 months); and
  - Other helpful documents, as applicable:
    - Individualized Education Plan (IEP), 504 Plan, and other educational documents; and
    - Mental health evaluations and records.
- d) Once the all documents have been gathered, the CCO uploads the documents and a Transmittal Form to CHOICES. Note, an application must have a Transmittal Form and include all required documents to be considered complete.
- e) After uploading the information to CHOICES, the CCO must send an e-mail to the CCO Mailbox informing OPWDD that the information is ready for OPWDD review.

OPWDD will only review formally submitted applications for eligibility determination. An application for eligibility is considered to be formally submitted when defined as: all required documents (outlined above) and the transmittal form uploaded to CHOICES, and e-mail to the CCO Mailbox informing OPWDD of the CHOICES upload. Once the application is formally submitted, OPWDD reviews and determines whether the person is eligible for OPWDD services based on the criteria outlined in MHL § 1.03(22) and 14 NYCRR §§ 629.

#### Other Considerations for OPWDD Eligibility Applications:

An OPWDD Transmittal Form must accompany all requests submitted to the DDRO for eligibility determinations. The Transmittal Form includes the name of the person, their representative (if applicable), and relevant contact information. Documentation of the person's developmental disability must also be included as part of the eligibility request. The Transmittal form can be found on the OPWDD website at <https://opwdd.ny.gov>.

For those applicants lacking complete documentation of a condition that may constitute a developmental disability or documentation that provides information related to a substantial handicap as described in these guidelines, the designated DDRO intake personnel will request the referral source to provide the needed additional documentation.

Upon the receipt of complete documentation, the DDRO will make an eligibility determination in a timely manner (see description of each step for details).

#### **f) 1<sup>st</sup> Step Review**

DDRO staff review the eligibility request for completeness and share information with staff designated by the DDRO Director as necessary. After this review, the following outcomes are possible:

- Eligibility or Provisional Eligibility has been determined; or
- The documentation accompanying the request is incomplete and additional documentation is required; or
- The request has been forwarded for a 2<sup>nd</sup> Step Review.

If the individual is determined Eligible or Provisionally Eligible, and the 1<sup>st</sup> Step Reviewer is not a Licensed Psychologist or Licensed Clinical Social Worker, the 1<sup>st</sup> Step determination must be reviewed for accuracy by a Licensed Psychologist or Licensed Clinical Social Worker prior to a determination letter being issued.

Once the complete referral documentation packet is received, the 1st Step decision should be issued by the DDRO within 30 days.

When it cannot be confirmed that the person meets OPWDD eligibility criteria, their

eligibility packet must be forwarded for a 2nd Step Review.

### **g) 2<sup>nd</sup> Step Review**

Each Regional DDRO has established a 2<sup>nd</sup> Step Eligibility Review Committee. This team includes a licensed psychologist and other clinicians as designated by the Regional DDRO Director. When appropriate, the 2<sup>nd</sup> Step Committee should also include input from a licensed physician, a physician's assistant, or a nurse practitioner.

The 2<sup>nd</sup> Step Eligibility Committee will conduct a review of the eligibility materials forwarded by the 1<sup>st</sup> Step Review, including any additional documentation that was provided. If the 2<sup>nd</sup> Step Committee requires additional medical information, psychological test results, or historical documentation, the person who submitted the request for services is notified in writing about the type of information needed and the date by which such information must be submitted to the DDRO. Once a complete referral packet (including any newly requested information) is received, the DDRO should make an eligibility determination within 30 days.

Following the 2<sup>nd</sup> Step Review, the DDRO provides the person with written notification of the committee's determination. If the person is found ineligible for OPWDD services, because they do not have a developmental disability or qualifying condition [as defined by Mental Hygiene Law, Section 1.03(22)], the DDRO must provide them with a summary list of materials or reports that were reviewed and considered and the reasons for the denial. In addition, the letter shall offer the person and their representative, the opportunity to:

- Meet (face-to-face) with the DDRO staff to discuss the determination and documentation reviewed;
- Request a 3<sup>rd</sup> Step Review; and
- Request a Medicaid Fair Hearing if Medicaid-funded services are sought.

A Notice of Decision (NOD) informing the person of their right to request a Medicaid Fair Hearing is sent only when the Transmittal Form indicates that the person has identified an interest in receiving Medicaid-funded OPWDD services. If the person has not indicated an interest in receiving Medicaid-funded services, a Fair Hearing is not offered, and the decision of the DDRO is final.

The individual may choose one, two, or all three of the above options. If a Fair Hearing is requested, a 3<sup>rd</sup> Step Review will be initiated automatically.

### **h) 3<sup>rd</sup> Step Review**

3<sup>rd</sup> Step Reviews are coordinated by OPWDD Central Office. Committee members include licensed practitioners who were not directly involved in the determinations made at the 1<sup>st</sup> and 2<sup>nd</sup> Step Reviews. The Committee reviews the submitted eligibility request and any corresponding documentation provided by, or on behalf of, the person. The Committee forwards its recommendations to the DDRO 2<sup>nd</sup> Step

Eligibility Review Coordinator and the Director of the DDRO. The DDRO Director or designated staff person(s) considers the 3<sup>rd</sup> Step recommendations and informs the person of any change in the DDRO's determination. 3<sup>rd</sup> Step reviews will be completed upon request or, with sufficient notice, prior to any Medicaid Fair Hearing date.

Upon receipt of all of the required documentation from the DDRO, Central Office will have 30 days to determine eligibility and notify the DDRO of its finding. The DDRO will then have 10 days to notify the referring party of any changes in the DDRO's determination.

#### **i) Provisional Eligibility for Children Through Age 7**

A child through age 7 (i.e., prior to child's 8<sup>th</sup> birthday) may be found to be provisionally eligible following a **First, Second, or Third Step review** when the available evidence indicates the presence of developmental disability but is insufficient for a full determination of eligibility. **An eligibility redetermination shall be required, as specified in the initial or subsequent determinations of provisional eligibility but must be completed at least once prior to the child's 8<sup>th</sup> birthday. Children with provisional eligibility who have reached their 7<sup>th</sup> birthday will not be authorized to receive additional services (e.g., an increase in service hours for services approved before their 7<sup>th</sup> birthday; or new services that were not approved before their 7<sup>th</sup> birthday), except in extraordinary circumstances and upon the approval of the Commissioner.**

It is expected that **provisional eligibility** will be established exclusively in those instances where infants and young children between birth and seven years of age manifest substantial delays, with or without specific congenital or acquired conditions that have 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 judgments, reviews of Provisional Eligibility determinations will be conducted between the ages of 6 and up to 8 years; however, interim reviews may be completed at earlier ages if clinically indicated or requested by the DDRO. Review of a Provisional Eligibility determination **may** result in:

- Renewal of Provisional Eligibility (this option is not available once the child reaches their 8<sup>th</sup> birthday);
- Determination of full eligibility; or
- Determination of ineligibility.

#### **j) Maintaining Eligibility Records**

All documentation used for eligibility determinations will become a permanent part of the clinical record for each individual and must be maintained as such by the DDRO. It is also recommended that the individual or referring agency retain such information as well.

## **B. Redeterminations of Eligibility**

OPWDD may review and consider an individual's eligibility status, except for Willowbrook Class members, at any time.<sup>1</sup> However, there are some situations where eligibility redeterminations are generally done, including:

- Before expiration of provisional eligibility status or at age eight for individuals who remain in provisional eligibility status but who have not submitted timely updated information by their 8<sup>th</sup> birthday (e.g., by their 7<sup>th</sup> birthday);
- New information is presented that raises a question regarding eligibility;
- There has been a significant break in service/s and the individual's ability to live independently without significant supports during that time casts doubt on the degree of the individual's adaptive deficits and continuing need for services;
- An individual resides in a Nursing Facility, with no OPWDD eligibility determination since 1/1/2007; and
- Limited Service: new or additional services are requested by individuals whose eligibility status was not confirmed by a prior full eligibility review.

### **i. Provisional Eligibility**

Eligibility for children who are first determined *provisionally* eligible for services must be reviewed again by a DDRO prior to the child's eighth birthday. The DDRO should notify the family, or other authorized representative, of the need for updated documentation for this review about twelve months prior to the individual's provisional eligibility expiration date. Updated clinical information should be provided to the DDRO by the child's 7<sup>th</sup> birthday so their provisional eligibility can be reviewed. If updated documentation is not timely provided, the individual's eligibility determination may be delayed, potentially resulting in a lapse in services. Provisional eligibility expires as of the child's eighth birthday and providers must not bill for services provided after that date unless updated information has been submitted and is under review or a written notice of eligibility termination has been issued by the DDRO and continuation of aid has been requested.

### **ii. New Information**

In certain circumstances, new information is made available to the DDRO or to the agency providing services. The eligibility of an individual receiving Medicaid services is reviewed when information is made available that indicates that (a) the original referral record was incomplete; (b) the original record does not accurately represent the individual's current status and eligibility; or (c) the original determination was made in error.

As with the redetermination process described above, the DDRO will review current assessments and evaluations regarding an individual's diagnoses and level of adaptive functioning, and all other available records. When the individual does not meet the eligibility criteria, a face-to-face meeting and 3<sup>rd</sup> Step review are offered

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<sup>1</sup> Willowbrook Class members will remain eligible for OPWDD services, and their status will not be re-determined, even if their circumstances change over time.

before a Notice of Decision is issued to discontinue Medicaid-funded services and notification of the individual's right to a Fair Hearing.

### iii. Significant Break in Service

This circumstance may occur when an individual previously enrolled in an OPWDD program has not received available services for one year or more (i.e., there is a significant break in service), **and** the individual's ability to live independently without significant supports during that time casts doubt on the degree of the individual's adaptive deficits and continuing need for services. Consistent lack of access to a service that is being sought during a period *does not* constitute a 'break in service.' Additionally, a break in service associated with a medically necessary placement in a skilled nursing or long-term rehabilitation facility should be expected to be substantially longer (up to a three-year period) before an eligibility re-review may be considered.

**Exceptions to the rule apply to residents of nursing facilities.** If the person is currently residing in an ICF or resided in an ICF immediately prior to hospitalization or nursing facility (NF) admission, or is a Willowbrook Class member, eligibility need not be reviewed, and the person can be considered eligible for OPWDD services and for new OPWDD services. Likewise, if the person is currently enrolled in HCBS, or was enrolled immediately prior to hospitalization or NF admission, eligibility need not be reviewed and the person can be considered eligible for new OPWDD services.

### iv. Eligibility Status and Limited Services/Service Requests

Some people who may not have had an initial full eligibility review in the past may be required to have a full, formal review of documentation to justify current eligibility when they request certain services. The re-determination requirement is not automatic; it depends on the level of a person's *current* status and services.

For example, an individual who *currently receives* HCBS waiver service(s) would not have eligibility re-determined if the person requests a new service or changes a level of service. Similarly, those whose disability has been well-documented through residence in an ICF setting would not have eligibility re-determined before transfer to another residence, or enrollment in the HCBS waiver. However, an individual who has not previously had a full eligibility review who receives Care Management *only*, or other *limited* services (Family Support Services and/or Article 16 clinic services), would have to initiate and complete the full eligibility review process if enrollment in HCBS is requested.

In general, certain individuals who receive limited services and have had no prior formal eligibility review in the past would continue to receive only currently utilized services. If additional services are requested/needed, the individual would have a formal eligibility review to determine whether they have a qualifying developmental disability or condition. Without this review, individuals are prevented from receiving additional services until their status is changed.

In accordance with the guidance above, if individuals require an eligibility

review/determination before additional services can be approved, they should be advised of the risk of being terminated from their existing services should they be found not to meet DD criteria because of the eligibility review.

This general rule regarding service status and eligibility determination applies to residents of nursing facilities, whether they currently receive OPWDD services, formerly received OPWDD services, or are a resident in a nursing home who is referred for eligibility review. If an individual is being considered for NF placement, or is already admitted to an NF and requires a Preadmission Screening and Resident Review (PASRR) Level II assessment, their eligibility status must be confirmed. If the person is already known to the OPWDD system, but has not had an eligibility review/determination, the general rule is that DD eligibility must be established before the person can be considered for any new OPWDD services. The person should be referred to the 3-step eligibility process, subject to the exceptions noted.

## **SECTION V: FACTORS THAT PROMPT SECOND STEP REVIEW**

Each Regional DDRO has established a 2<sup>nd</sup> Step Eligibility Review Committee that conducts a review of the eligibility materials forwarded by the 1<sup>st</sup> Step Review, including any additional documentation that was provided. Certain factors are likely to prompt the need for 2<sup>nd</sup> Step review of eligibility determinations. Eight examples follow:

1. Requests for eligibility determinations submitted by a referral source that has previously submitted inaccurate or incomplete information regarding the person and their related diagnoses, details of onset, anticipated continuation of disability, or substantiality of handicap.
2. Requests for eligibility determinations for a person with a sensory impairment (e.g., profound loss of vision or hearing).
3. Requests for eligibility determinations for a person with exceptional needs (for example: significant sensory impairment, English is not the individual's primary language, or younger than age 5) that have not been evaluated using the most appropriate instruments to ascertain the nature of the disability condition or presence of substantial handicap.
4. Requests for eligibility determinations for people diagnosed with a disability condition which is associated with idiosyncratic or greatly varying substantiality, of handicap or functional limitations, and for which the severity and breadth of functional limitations consistent with substantial handicap are not adequately assessed and documented. This would include such conditions as: Autism Spectrum Disorder, Traumatic Brain Injury (TBI) and Epilepsy.
5. Requests for eligibility determinations for a person with past or present involvement in correctional or criminal justice services (CJS) and incomplete documentation of qualifying disability, onset, expectations of indefinite continuation, and/or substantiality of handicap. In instances where correctional or CJS involvement is a concern, reviewers may wish to investigate the possibility of:
  - Malingering;
  - Assessment under inappropriate conditions;
  - Functional illiteracy that decreases test scores;
  - The inconsistency with which adaptive behavior may be assessed or evident in correctional and non-correctional environments (e.g., skill vs. performance opportunity issues); or
  - Neurological injury sustained after the person reaches age 22.
6. Requests for eligibility determinations for a person with incomplete documentation of disability, onset, expectations of indefinite continuation, or substantiality of handicap, and past or present involvement in alcohol or drug abuse or dependence.
7. Requests for eligibility determinations for a person with past or present psychiatric disability. Examples include:
  - When documentation of a developmental disability before or concurrent with the psychiatric disability, and occurring prior to age 22, is unavailable;

- 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 or not described (e.g., during periods of psychiatric instability or psychiatric stability is not specified); or
  - 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 the onset of the 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.
8. When a psychiatric disability and a developmental disability are both present, eligibility will be based on the presence of a developmental disability, as defined herein, regardless of whether the psychiatric disability or developmental disability is "primary." Such individuals may be dually eligible, in that they are eligible for services from both the mental health and developmental disabilities services sectors. Some of these individuals may require stabilization services through the mental health sector, and further assessment prior to participation in developmental disabilities services.

## **SECTION VI: REFERENCES**

American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (2014). *Standards for educational and psychological testing*, Washington, DC: AERA.

American Psychiatric Association. (2022). *Diagnostic and statistical manual of mental disorders, 5<sup>th</sup> edition Text Revision.*, Washington, DC: Author.

Schalock, R. L., et al. (2021). *Intellectual Disability : Definition, Classification, and Systems of Supports (12th Edition)*. Washington, DC : American Association on Intellectual and Developmental Disabilities.

## Appendix A: Application Checklist for Determination of OPWDD Eligibility

### Application Checklist for Determination of OPWDD Eligibility

Name: _____	Date of Birth: _____
Language: _____	Age*: _____
What do you believe the qualifying diagnosis** is? _____	

\* **AGE:** Age is important in determining OPWDD eligibility. If the person is 7 years of younger, they might not have a qualifying diagnosis yet. In this case, OPWDD may consider granting them provisional eligibility when considering all other information.

\*\***QUALIFYING DIAGNOSES:** These include Intellectual Disability (ID), Cerebral Palsy (CP), Epilepsy/seizure disorder, Autism Spectrum Disorder (ASD), Familial Dysautonomia (a rare genetic disorder), Prader-Willi Syndrome, and other Neurological Impairments (injury, malformation, or disease of the brain and/or spinal cord) that is expected to continue indefinitely.

### Process for Eligibility Document Submission to OPWDD



## Eligibility Documents

### Required Documents:

\_\_\_\_\_ **Cognitive Testing** (All available)

\_\_\_\_\_ **Adaptive Assessments** (All available)

\_\_\_\_\_ **Medical Documentation** (If the qualifying diagnosis is suspected to be something *other than* an intellectual disability, you must provide documentation to support the diagnosis at the time it was diagnosed)

\_\_\_\_\_ **OPWDD Transmittal Form** (Must be submitted with the upload of required documents to CHOICES. Additional Transmittal Forms must also be uploaded to CHOICES if the person's demographic information changes during the eligibility determination process)

\_\_\_\_\_ **Social/developmental history, psychosocial report or other report that shows that the person became disabled before age 22** (unless contained in other reports).

\_\_\_\_\_ **Social evaluation** (<https://opwdd.ny.gov/adm-2020-04-social-evaluation-requirements-initial-level-care-eligibility-0>)(Completed within the past 12 months)

### Other helpful documentation, if available:

\_\_\_\_\_ **IEP or 504 Accommodation Plan and/or other school records** (Most recent IEP/504. Please also send us all psychoeducational reports referenced on the Plan)

\_\_\_\_\_ **Mental Health Evaluations & Records, if applicable** (Intake, Discharge, Treatment Plans – no progress notes please)

### Next Steps:

- Upload required documents to CHOICES.
- E-mail the CCO Mailbox and let OPWDD know that the documents are in CHOICES. The documents, uploaded information to CHOICES, and e-mail are the person's application for OPWDD eligibility.

*Please see attached or reverse for descriptions of the above.*

## **OPWDD Eligibility Documentation Additional Information**

### **TRANSMITTAL FORM**

- **Transmittal Form:** See attached. Transmittal forms must be uploaded to CHOICES along with all required documentation. Instructions on how to complete the form are on the back of the form.

### **PSYCHOLOGICAL TESTING**

*(See the attached "Important Facts" sheet for acceptable measures)*

- **IQ (Cognitive) Testing:** All current and available evaluations which include an assessment of intellectual functioning ("IQ test"). This report must include all summary scores from the assessment (e.g., Full Scale, Index, Part and Subtest scores).
- **Adaptive Behavior Assessment** – This is an interview or form completed by someone familiar with the person, in order to provide information about their daily living skills and functioning. As with IQ testing, the report should include all scale and summary scores and a narrative report written by the clinician. Computer generated reports alone are **not** acceptable.

### **MEDICAL REPORTS AND SPECIALTY ASSESSMENTS**

- **Medical Reports and Specialty Assessments:** Relevant medical reports including specialty assessments (e.g., neurological evaluations, neuro-psychological, genetic testing, etc.) for any qualifying diagnosis other than Intellectual Disability. These reports must include the qualifying diagnosis, how it was arrived at, and how it impacts the person's functioning.
- **Autism:** If this person is diagnosed with autism, you must provide a report from a comprehensive differential diagnostic assessment. This assessment must use structured autism spectrum disorder-specific measures which are based on licensed clinician observation of the person and considered to be reliable and valid. The report must include a comprehensive developmental history. This includes information about the person's developmental milestones, repetitive behaviors, preoccupations, social interactions, friendships, and other relevant information. The report must also include an observations section that describes the person's behavior during the evaluation in detail. In addition, the diagnosis must include which specific symptoms of autism this person has and behavioral descriptions of how the symptoms present in this person.
- **Social History, Psycho-Social Report, or Other Background Information:** This information must indicate the presence of a developmental disability prior to age 22. Background information is also needed if person being referred is age 17 or younger. This

report must include comprehensive social and background information (e.g., work history (if any), living situations). ***Anecdotal information is especially important if routine documentation is unavailable.*** A separate report may not be needed if sufficient information is contained in other comprehensive evaluations.

### **EDUCATIONAL RECORDS**

- **PERSONIZED EDUCATION PLAN (IEP) or 504 Accommodation Plan:** The most current must be submitted for school-aged people. Also include any psychoeducational reports referenced in the plan. For those who are no longer in school (e.g., no longer school aged, they have graduated), you must submit any school records available.
- **Early Intervention (EI):** If the person has an EI plan, they must submit it. This includes the Core Evaluation and progress notes, including a level of deficit for each domain.

### **ADDITIONAL INFORMATION**

- All medical and/or clinical assessment reports must be signed by the clinician.
- Please DO NOT highlight or write on any documents.
- Additional information may be requested by OPWDD as needed.