

Department of Developmental Services ("DDS")

The Department of Developmental Services (DDS) is an agency under the Executive Office of Health and Human Services. Its name is reflective of the expectations about the persons with disabilities it serves in the community. However, unlike its name suggests, DDS does not serve all persons in the Commonwealth with developmental disabilities, rather it serves only those persons residing in the Commonwealth with intellectual disability.

M.G.L. c. 19B, covers the creation and powers of DDS and under such law, DDS has the duty to "take cognizance of all matters affecting the welfare of the persons with an intellectual disability." 115 CMR sets forth the regulations of DDS, which applies to the operation of DDS and to the operation and provisions of services and supports by public and private programs and facilities that are subject to DDS jurisdiction.

This article will cover DDS basic adult eligibility, the services offered by DDS and its policies regarding the grant of services and supports.

I. GENERAL ELIGIBILITY:

Persons who are 18 years of age or older are eligible for DDS services if they are domiciled in Massachusetts and a person with intellectual disability, as defined by 115 CMR 2.01.

1. Domicile:

A person is considered to be domiciled in Massachusetts if he or she resides in Massachusetts with the intention to remain in Massachusetts. DDS, unlike other Health and Human Services agencies, does not have a straight forward residency requirement. Rather, DDS's requirement is more stringent as it presumes that certain persons are not domiciled in the state.

There is a presumption that the following persons are not domiciled in Massachusetts:

- a. Persons who reside in a home or setting subject to licensure or regulation by the Commonwealth, which residence was arranged or is being funded by another State;
- b. Persons who reside in a home or setting subject to licensure or regulation by the Commonwealth, which residence was arranged by a parent, guardian, or family member who is not domiciled in Massachusetts and was not so domiciled at the time of the placement; and
- c. Persons not covered by a or b, ages 18 through 21, who reside in a residential special education program and whose parent or guardian is not domiciled in Massachusetts.

In the event that DDS determines that an applicant for services is not domiciled in Massachusetts, it denies the application without determining whether the applicant is a person with intellectual disability.

2. Intellectual Disability:

In 2006, DDS changed its regulations to include a definition of intellectual disability that required an applicant have an IQ of 70 or below as one of its criteria for eligibility. Such a requirement is more restrictive than most other states in the country and was contested by many as too restrictive.

In 2012, The Massachusetts Appeals Court in *Tartarini v. Department of Mental Retardation* 82 Mass.App.Ct. 217 (2012), found DDS's practice of imposing a strict IQ requirement inconsistent with the state statute enabling DDS and authorizing its regulations. As such, DDS regulations regarding intellectual disability were struck down, necessitating new regulations.

DDS now defines Intellectual Disability consistent with the American Association of Intellectual and Developmental Disabilities definition as follows:

Intellectual Disability means, consistent with the standard contained in the 11th edition of the *American Association of Intellectual Disabilities: Definition, Classification, and Systems of Supports* (2010), significantly sub-average intellectual functioning existing concurrently with and related to significant limitations in adaptive functioning. Intellectual disability originates before age 18. A person with intellectual disability may be considered to be mentally ill as defined in 104 CMR (Department of Mental Health), provided that no person with intellectual disability shall be considered to be mentally ill solely by reason of his or her intellectual disability. The determination of the presence or absence of intellectual disability requires that exercise of clinical judgment.

Significant Limitations in Adaptive Functioning means an overall composite adaptive functioning limitation that is approximately two standard deviations below the mean or approximately two standard deviations below the mean in one of the three domains of the appropriate norming sample determined from the findings of assessment using a comprehensive, standardized measure of adaptive behavior, interpreted by a qualified practitioner. The domains of adaptive functioning that are assessed shall be:

- a. areas of independent living/practical skills;

- b. cognitive, communication, and academic/conceptual skills; and
- c. social competence/social skills.

Significantly Sub-average Intellectual Functioning means an intelligence test score that is indicated by a score of approximately 70 or below as determined from the findings of assessment using valid and comprehensive, individual measures of intelligence that are administered in standardized formats and interpreted by qualified practitioners.

II. SERVICES OFFERED

DDS offers a wide array of services and supports to individuals, from community based supportive services in an institutional setting. In addition to DDS services, individuals who are eligible for Medicaid may receive services from a “plan of care”. DDS currently administers Home and Community Based Waivers, which are federal/state programs designed for individuals of similar needs to receive community based supports.

The following is a list of services from DDS:

Supportive Services

Family Supports- various services that support the individual within the family home

Examples of family support services include respite care, social/ recreational services, minor home modifications and other goods or purchases.

Employment Supports- assistance for competitive employment and ongoing job coaching / support.

Center-based Work- work training provided within a facility, may include group enclave employment in community.

Home and Community Based Work- pre-vocational training provided within a facility.

These services can include community integration, specific skill training, group enclave employment, volunteer experiences.

Individual Supports- support for individuals to live independently. Includes 15 hours or less a week of supports may include: medical care coordination, money management, household skills, utilization of community resources, and other supports.

Community Living Supports

Intensive Individual Supports- support to individuals living independently, same as above but provision of over 15 hours per week of supports.

Intensive Family Support- range of more intensive services that support the individual who is living with his or her family. Intensive Family Support is provided to individuals who have increased medical, behavioral health or skill needs.

Comprehensive or Community 24-Hour Supports

Shared Living- supervision and skill building services provided by a professional (s) who live (s) with the individual. The home or apartment is obtained as a home for the individual and the “mentor” or obtained for the individual who chooses his/her “mentor” to live with him/her. There are a number of non-profit agencies that provide variations on this model and serve individuals with a wide variety of needs including specialized ones.

Group Residential Supports- 24/7 supervision and skill building services provided with other individuals who need a similar level of service. Homes can vary in size and in staffing ratios depending on the needs of the individuals living in the home. Homes are run both by non-profit service providers and by the DDS. The service may also be tailored to specialized needs such as behavioral health challenges and medical needs.

Self Directed Services

Individuals and/or their families may direct their own services. An individual who is prioritized for a particular service and has a funding allocation, can (with support) plan his or her own services and manage his or her individual budget. In addition to deciding how the funds are spent, an individual may recruit, hire and supervise his or her staff. This option offers more flexibility over services by shifting much of the control and the responsibility to the individual and/or his or her family.

Medicaid/State Plan Services

Day Habilitation Supports- center-based program that includes allied health services such as nursing, physical therapy, occupational therapy. The focus in these programs is on pre-vocational skills, individual needs relating to medical conditions and other skills training needs. Individuals need to meet the Day Habilitation eligibility criteria set by MassHealth.

Personal Care Attendant Services- 1:1 assistance for personal care needs, funded by MassHealth, need to meet PCA eligibility criteria.

Adult Foster Care – supervision and skill building services provided in the care provider’s home. The individual would live with the provider of services. The provider could be an individual, individuals or family who would provide ongoing supervision and skill building services such as household skills, money management, medical care coordination, and community/ social integration. The individual must meet the criteria for adult foster care.

III. PRIORITY FOR SERVICES

DDS divides the state into Regions and each Region into Areas. Each Area is run by the Area Director. It is the Area Director that determines priority for supports provided, purchased or arranged by DDS based upon the severity of the individual’s needs, in accordance with 115 CMR 6.07. DDS presently serves over 30,000 individuals and all services are subject to appropriation. Therefore, the grant of services

should be based on a standardized process that considers need and fairness to all individuals.

Once an individual is found eligible for supports, the appropriate Area Office will determine the individual's prioritization for available supports. To do this, DDS utilizes the MASSCAP, or Massachusetts Comprehensive Assessment Profile. The MASSCAP was developed to assist DDS to evaluate an individual's needs/abilities and the strengths/challenges of caretakers.

The MASSCAP consists of two assessments, the Inventory of Client and Agency Planning (ICAP) and the Consumer and Caregiver Assessment (CCA). The ICAP is the tool that assesses an individual's level of functioning and level of support and supervision needed. The CCA is a tool that assesses the resources and supports currently in place and/or available to the individual, including a review of the capabilities of caregivers.

The completed ICAP and CCA provide a service score. This score is reviewed by DDS staff who will apply professional judgment in making a final determination of priority. DDS will determine whether an individual is First Priority, Second Priority or No Priority. First Priority means that the support requested is necessary to protect the health or safety of the individual or others. Second Priority means that the support requested is necessary to meet one or more of the individual's needs or to achieve one or more of the needs identified in the service plan. No Priority means that the requested service is not needed.

IV. APPEALS

DDS regulations outline the standards and procedures for appeals and redress of matters affecting applicants for services and recipients of services. The following issues may be appealed:

1. Decision by DDS to deny eligibility for services;
2. Decision by DDS regarding assignment of priority for services;
3. Decision by DDS regarding whether to perform assessments in the support planning process;
4. Whether the goals identified in the support planning process are consistent with and promote outcomes for the individual as defined by regulation;
5. Whether the type of supports identified in the support planning process are appropriate and available to meet the goals stated in the support plan;
6. Whether the use of behavior modification plans are consistent with regulatory requirements;
7. Whether the recommendations regarding an individual's ability to make personal and financial decisions and the supports identified for the same are appropriate;
8. Whether the development, review and modification of the support plan was consistent with regulatory requirements; and
9. Whether the support plan is being implemented.

An appeal is initiated by notifying the Regional Director for the DDS region in which the applicant or individual resides, in writing, within thirty days after receipt of DDS's decision. Once the appeal is initiated, the DDS Regional Director will hold an "informal conference" within 30 days. The purpose of an informal conference is to conciliate the issues being appealed. In the event that conciliation is not accomplished, the informal conference should be used to clarify issues for further appeal and determine what issues and/or facts the parties agree on.

Within 30 days from the conclusion of the informal conference, an appellant must petition the Commissioner of DDS for a fair hearing. DDS must hold the fair hearing within 60 days from the filing of the appeal. The fair hearing is conducted by an impartial hearing officer designated by the Commissioner, including an employee of DDS. The appellant has the burden of proof, by a preponderance of the evidence to show that the decision(s) of DDS was incorrect. To meet this burden, the appellant has the right to be represented, present any relevant evidence and call and examine witnesses. The procedural rules governing all hearings are administered pursuant to the Informal Rules of the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.02.

Following the hearing, the hearing officer prepares and submits to the Commissioner a recommended decision, including a summary of the evidence presented, findings of fact, proposed conclusions of law, the recommended decisions and the reasons for the decision. The findings of fact in the recommended decision are binding, but the Commissioner has limited authority to modify the conclusions of law and decisions. Such authority is limited to those conclusions or decisions that are in excess of statutory authority or jurisdiction; based on an error of law; arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Within 45 days of the conclusion of the fair hearing, the Commissioner must issue a decision with is a final decision of the agency. If a party continues to be aggrieved by final decision of DDS, judicial review of the decision is available under M.G.L. c. 30A.

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