

Pre-Hearing Memorandum

RE: Jane Doe

SS#:

Introduction

Jane Doe is an 11 year-old girl in the 5th grade, who has been diagnosed with Attention Deficit Hyperactive Disorder (“ADHD”), Combined Type, and Adjustment Reaction NOS. On March 31, 2004, the Social Security Administration (“SSA”) denied Jane’s initial application for Supplemental Security Income (“SSI”) disability benefits. In making its determination, the SSA evaluated Jane for ADHD, Borderline Intellectual Functioning, and a Learning Disorder, and concluded that while she has mental impairments, the severity of her impairments did not medically meet or equal a listing.¹⁻²

As the record reflects, Jane meets listing 112.11- Attention Deficit Hyperactivity Disorder because she has medically documented findings of marked inattention; impulsiveness; and hyperactivity, and also exhibits marked impairments in age appropriate cognitive/communicative function; social functioning; personal functioning; and marked difficulties in maintaining concentration, persistence and pace.³ Jane also functionally equals the listing for ADHD because her impairments result in marked limitations in her ability to acquire and use information; to attend and complete tasks; to relate and interact with others; and to care for herself.⁴

Statement of the Case

Procedural Posture

Ms. Sandra Doe, Jane’s grandmother and guardian, initially applied for Child SSI Disability Benefits on behalf of Jane Doe on December 18, 2003.⁵ The SSA found that Jane’s impairments were not severe enough to qualify her to receive disability benefits, and subsequently denied her initial application on March 31, 2004.⁶ Ms. Doe was notified of this decision on April 5, 2004.⁷ Ms. Doe subsequently requested reconsideration of the decision on April 20, 2004.⁸ The reconsideration was denied on May 25, 2004.⁹ Ms. Doe was notified of the decision to deny the reconsideration on May 28, 2004.¹⁰ Ms. Doe subsequently requested a hearing by an Administrative Law Judge on July 28, 2004.¹¹

¹ Exhibit 5F

² Exhibit 7F

³ 20 CFR pt. 404, Subpt P, App. 1.

⁴ 20 CFR pt. 416, Section 926a

⁵ Exhibit 2D

⁶ Exhibit 1A

⁷ Exhibit 1B

⁸ Exhibit 2B

⁹ Exhibit 2A

¹⁰ Exhibit 3B

¹¹ Exhibit 4B

Statement of Facts

Jane Doe is an 11 year-old girl with a long history of severe developmental and social handicaps. She has been in the custody of Ms. Sandra Doe since she was 18 months old.¹² Ms. Doe agreed to care for Jane because Jane's mother could not care for her, and because at the time it was believed that Ms. Doe was Jane's paternal grandmother.¹³

Jane began exhibiting developmental delays early in childhood. She was not toilet trained until she was almost 3 years old and currently still experiences occasional enuresis.¹⁴ ¹⁵ Jane's academic struggles began as early as the first grade. Jane received D's and F's in the first grade, but was passed to the second grade nonetheless.¹⁶ Jane struggled in 2nd grade, and was failing in all academic areas.¹⁷ As a result of Jane's struggles Ms. Doe sought help both from medical professionals at MetroHealth Medical Center ("MetroHealth") and from the Cleveland Municipal School District.

Ms. Doe requested assistance from Jane's second grade teacher, Ms. E., during the 2002-2003 school year. Ms. E. subsequently submitted a "School Age Request for Assistance" to the Cleveland Municipal School District. In response, the Cleveland Municipal School District conducted a multi-factored evaluation ("MFE") of Jane on April 10, 2003.¹⁸ Jane's Wechsler Intelligence Scale for Children-III ("WISC III") scores were in the cognitively disabled range; her Verbal IQ score was 72, her Performance IQ was 63, and her Full Scale IQ was 65.¹⁹ The mean of the WISC III is 100, and the standard deviation is 15. Jane's Woodcock-Johnson Tests of Achievement Score ("WJR III") for calculation was 75, and indicates her calculation ability are at a 1.1 grade level.²⁰ Jane's Peabody Individual Achievement Test-Revised ("PIAT") scores were the following: Reading Recognition- 80, Reading Comprehension- 70, Math Reasoning- 72, Spelling 65, and Written Expression 68.²¹ These PIAT scores indicate that her academic abilities ranged from an early kindergarten (K.2) to early first grade (1.3) level. Jane scored "Low" rankings in the area of "Independent Living" and in the area of "Language and Academics" on the Normative Adaptive Behavior Checklist-Revised.²² Based on these findings, the Cleveland Municipal School District concluded that Jane was cognitively disabled and suffered deficits in two areas of adaptive behavior, and therefore that she was eligible to receive special education services.²³

Ms. Doe also brought Jane to see Dr. J. at MetroHealth on October 15, 2002, specifically because of "concern's about [Jane's] actually losing function in school; ie books previously known, flash cards previously used, no longer seem familiar."²⁴ Jane was subsequently referred to a number of specialists including Dr. N., Psy. D. As part of her evaluation, Dr. N. obtained Jane's WISC III and WJR III scores from the Cleveland Municipal School District. Dr. N. also

¹² Exhibit 2F pg. 3, Medical Report dated 01-07-2003

¹³ Exhibit 8F pg. 26, Medical Report dated 05-14-2003

¹⁴ Exhibit 8F pg. 26, Medical Report dated 05-14-2003

¹⁵ Medical Record dated 11-03-2005

¹⁶ Exhibit 2F pg. 3, Medical Report date 01-07-2003

¹⁷ Exhibit 1F pg. 3

¹⁸ Exhibit 1F pg. 12

¹⁹ Exhibit 1F pg. 10

²⁰ Exhibit 1F pg. 9

²¹ Exhibit 1F pg. 9

²² Exhibit 1F pg. 11

²³ Exhibit 1F pg. 16

²⁴ Exhibit 3F pg. 28, Medical Report dated 10-15-2002

administered the Conners ADHD/DSM-IV evaluation forms to Ms. Doe and to Jane's 2nd grade teacher, Ms. E. The scores from the Conners parent form completed by Ms. Doe and the scores from the Conners teacher form completed by Ms. Erwin were consistent with each other, and all of the Conners ADHD/DSM-IV scores were clinically significant. Based on the Jane's standardized test scores, and on the results of the Conner's ADHD/DSM-IV, Dr. N. formally diagnosed Jane with ADHD and Mild Retardation on June 4, 2003.²⁵

Since 2003, both the school district and Jane's doctors have made concerted and consistent effort to address Jane's impairments. Jane has been on stimulant therapy (Ritalin/Concerta) for her ADHD since January of 2004.²⁶ ²⁷ Jane has seen a therapist, Dr. B., regularly since May of 2003. Jane has received an Individualized Education Program ("IEP") from the Cleveland Municipal School District since 2003.

In spite of these efforts, Jane has continued to struggle both academically and socially. Jane's academic performance has been consistently far below her appropriate age and grade level. Jane has repeated the 4th grade once, and while she was in 5th grade her academic functioning was found to range from the 1st to the 3rd grade level.²⁸ Jane has exhibited severe impairments in her ability to maintain concentration, persistence and pace, which negatively affects her ability to complete simple daily tasks such as bathing and dressing herself, and completing homework.²⁹ Recent evaluations both by the Cleveland Municipal School District and by qualified professionals have confirmed that these impairments are ongoing.³⁰ ³¹

Argument of Law

I. Jane meets listing 112.11 (Attention Deficit Hyperactivity Disorder), therefore Disability Benefits should be granted.

Jane has medically documented findings of marked inattention, impulsiveness, and hyperactivity, and also exhibits marked impairments in age-appropriate cognitive/communicative function, social functioning, personal functioning, and marked difficulties in maintaining concentration, persistence and pace. As such, her ADHD meets listing 112.11, and the SSA should find Jane eligible for benefits.

A. The legal standard under listing 112.11 (ADHD).

If a claimed impairment meets a listed impairment as described in the Code of Federal Regulations Title 20, Part 404, Subpart P, Appendix I, the claimant is disabled for the purposes of SSI, and is therefore eligible to receive SSI benefits. Each qualifying impairment listed under 112.00 "Mental Disorders", sets forth medical findings and functional limitations that must be found for a claimed impairment to meet a listing. The medical findings are set forth in the "paragraph A" requirements, and the impairment related functional limitations are set forth in the "paragraph B" requirements. A claimed impairment must satisfy both the paragraph A criteria and paragraph B criteria in order for benefits to be granted.

²⁵ Exhibit 8F pg 17-21, Medical Report dated 06-04-2003

²⁶ Medical Record 2-9-04

²⁷ Medical Record 5-10-06

²⁸ C. Report pg. 5

²⁹ C. Report pg. 1-2

³⁰ IEP plan for 2006-2007 school year

³¹ C. Report

The paragraph A criteria for listing 112.11(ADHD) require that there be medically documented findings of all three of the following:

1. Marked inattention; and
2. Marked impulsiveness; and
3. Marked hyperactivity.³²

The paragraph B criteria for listing 112.11(ADHD) require that for children aged 3 to 18, there must be 2 of the 4 following:

- a. Marked impairment in age-appropriate cognitive/communicative function, documented by medical findings (including consideration of historical and other information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized psychological tests, or
- b. Marked impairment in age-appropriate social functioning, documented by history and medical findings (including consideration of historical and other information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized tests; or
- c. Marked impairment in age-appropriate personal functioning, documented by history and medical findings (including consideration of historical and other information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including if necessary, appropriate standardized tests or
- d. Marked difficulties in maintaining concentration, persistence or pace.³³

Where “marked” is used as a standard for measuring degree of limitation it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with the ability to function (based upon age-appropriate standard expectations) independently, appropriately, effectively, and on a sustained basis. When standardized tests are used as a measure of functional parameters, a valid score that is two standard deviations below the norm for the test will be considered a marked restriction.³⁴

³² 20 CFR pt. 404, Subpt. P, App. 1.

³³ 20 CFR pt. 404, Subpt P., App. 1.

³⁴ 20 CFR pt. 404, Subpt P., App. 1.

B. Jane meets the legal standard for ADHD set forth in listing 112.11 because she meets the criteria set forth in paragraph A and paragraph B.

1. Jane exhibits marked inattention, marked impulsiveness, and marked hyperactivity. (112.11 Paragraph A)

An evaluation of Jane conducted by Dr. N. on June 4, 2003, includes documented medical findings that Jane suffers from marked inattention, impulsiveness and hyperactivity. The following standardized test scores were obtained as part of Dr. N. evaluation:

- a. Conners ADHD/DSM-IV Rating Scales completed by Ms. Doe returned the following scores³⁵:
 - Conners' ADHD Index 83
 - DSM-IV Inattention 72
 - DSM-IV Hyperactive Impulsive 75
 - DSM-IV Total 75
- b. Conners ADHD/DSM-IV Rating Scales completed by Ms. E., one of Jane's teachers, returned the following scores³⁶:
 - Conners' ADHD Index 90
 - DSM-IV Inattention 71
 - DSM-IV Hyperactive Impulsive 86
 - DSM-IV Total 88

These scores are standardized t-scores, with a mean of 50 and a standard deviation of 10. All of Jane's scores are at least 2, and sometimes 3 or 4 standard deviations from the mean. Subsequently, the scores were found to be "clinically significant." Dr. N. diagnosed Jane with ADHD in part based on these test results³⁷.

An evaluation of Jane conducted by Dr. C. on December 15, 2005, further supports the finding that Jane has marked inattention, impulsiveness and hyperactivity. Jane had taken her regular dosages of Ritalin (10 mg in the morning, 5 mg at noon, daily)³⁸ at the time of the evaluation with Dr. C., so her performance during the evaluation represents her best level of performance while on her prescribed medication.³⁹ The Conners ADHD/DSM-IV Rating Scales completed by Sandra Doe returned scores that were all "extremely elevated above the 99th percentile."⁴⁰ Dr. C. noted that the scores indicate "extremely severe problems with attention, concentration, and organization (>99th percentile), and extremely severe problems with hyperactivity, sitting still for long periods of time, restlessness, and impulsivity (>99th percentile)."⁴¹ Results from the Integrated Visual and Auditory Continuous Performance Test (IVA) demonstrate a lack of attention and an inability to stay focused. The IVA measures "...an individual's ability to stay focused on a task for a period of 15 minutes."⁴² Her scores on the IVA visual scales were so low they were "uninterpretable."⁴³ Her scores on the IVA auditory scales

³⁵ Exhibit 8F, pg. 19, Medical Records from 5/03 – 4/04

³⁶ Exhibit 8F, pg. 19, Medical Records from 5/03 – 4/04

³⁷ Exhibit 8F, pg. 20, Medical Records from 5/03 – 4/04

³⁸ Medical Record 2-27-06

³⁹ C. Report, pg. 4

⁴⁰ C. Report, pg. 3

⁴¹ C. Report, pg. 3

⁴² C. Report, pg. 4

⁴³ C. Report, pg. 4

were greater than 2 standard deviations below the mean, and indicate “severe difficulty maintaining a consistent level of focus and attention during the test.”⁴⁴

The standardized test scores and the observations of Dr. N. and Dr. C. are medically documented findings of marked inattention, impulsiveness and hyperactivity; therefore, Jane’s impairment meets the paragraph A criteria of listing 112.11 (ADHD).

2. Jane exhibits marked limitations in four sections under 112.11 Paragraph B.

Jane’s inattention, impulsivity and hyperactivity result in functional limitations that manifest themselves not only in standardized tests, but also in Jane’s daily life. As a result, Jane’s limitations have been documented not only in medical findings and standardized tests, but also by her grandmother and her educators. The record will show that because of her ADHD, Jane experiences marked limitations in cognitive and communicative functioning, social functioning, and personal functioning, and also marked limitations in her ability to maintain concentration, persistence and pace; therefore, Jane’s impairment meets the paragraph B- criteria of listing 112.11 (ADHD).

i. Jane suffers from marked impairment in age-appropriate cognitive and communicative functioning.

In 2003, the Cleveland Municipal School District conducted a Multifactorial Evaluation of Jane to ascertain her educational needs. The evaluation was requested by Jane’s grandmother, Sandra Doe, and Jane’s second grade teacher, Ms. E., because Jane was “Failing 2nd grade,” was “Way below grade level”, and “...has trouble expressing herself.”⁴⁵ The evaluation was conducted by Ms. T. , a school psychologist, on April 2, 2003. Results from the Woodcock-Johnson Tests of Achievement, show that while Jane was in the 2nd grade, her academic performance was at an early 1st grade (1.1) level. Results from the Peabody Individual Achievement Test-Revised, show that academic performance in different subjects ranged from early kindergarten (K.2) to the early 1st grade (1.3) level.⁴⁶ Ms. T. observed that,

“Currently Jane is able to read a few basic sight words, however her sight word vocabulary is overall very low. She does know most of her beginning consonant sounds, though these are not always consistent. She is able to read some basic one syllable words. Since Jane is unable to read all but a few words in isolation, her reading comprehension is likewise, very low. Jane’s writing skills are also very low. She is able to write her first and last names. However, she is unable to write more than a few words and cannot write basic sentences. When asked to write some specific words, she wrote random letters. Jane math skills are very low, at the late kindergarten to beginning 1st grade level. She is able to add one digit numbers without regrouping, however she was unable to complete any subtraction problems or problems that require regrouping. Jane can sometimes tell time to the hour, but not to the half hour or minute. Jane is able to identify coins by name, but not by value and she is unable to count small amounts of change. Jane struggles to determine which mathematical operation to use in basic story problems.” “Jane

⁴⁴ C. Report, pg. 4

⁴⁵ Exhibit 1F, pg. 3, 5. Multifactorial Evaluation dated 3-27-03

⁴⁶ Exhibit 1F, pg. 9 Multifactorial Evaluation dated 3-27-03

knows the months, but does not know the seasons of the year. She is unable to read basic safety words and is still confused when asked to identify or write some 2 digit numbers.”⁴⁷

Ms. T. also administered the WISC III, and results from the WISC III show that Jane has marked impairment in cognitive functioning. Jane’s Full Scale IQ was 65, and her Performance IQ was 63; both scores are 2 standard deviations away from the mean.⁴⁸ Jane received two “Low” rankings on the Normative Adaptive Behavior Checklist-Revised.⁴⁹ The Cleveland Municipal School District subsequently concluded that Jane was cognitively disabled, and was eligible to receive special education services.

In response to Jane’s need for special education, the Cleveland Municipal School District (“School District”) implemented an Individualized Education Program (“IEP”). The initial IEP meeting occurred on May 13, 2003, and was to plan for Jane’s 3rd grade school year, from May 13, 2003 to May 13, 2004. The initial report findings are very similar to the findings of the MFE; Jane could only read at a primer level, she could not write more than a few words or her name, and she could not count change, perform subtractions, or story problems.⁵⁰ As a result of the evaluation, the School District initially determined that Jane would spend at a minimum 2 hours and 40 minutes in a special education setting, and the remainder of the day in mainstream classroom setting. The School District later noted, “After careful review and close monitoring of Jane’s current academic progress and to effectively meet the stated goals and objectives listed in this IEP, it is necessary to reposition her to a self-contained classroom (100% of the time), for the remainder of the 2003-2004 academic year, where she can receive one/one instruction, small group instruction, and pullout services.”⁵¹

In spite of receiving special education services in her 3rd grade year, Jane failed to meet grade level requirements in reading, writing, math, science, and social studies.⁵² She only met grade level expectations in art, music, and physical education. Ms. R., Jane’s Special Education teacher, indicated in a teacher questionnaire dated January 30, 2004, that Jane’s cognitive and communicative functioning is not age appropriate, and that her impairments are a very serious detriment to her academic and social success.⁵³

Jane’s 4th grade IEP, effective from April 23, 2004 to April 23, 2005, shows that she demonstrated minimal progress. The report notes that she still has weaknesses in reading; she has trouble “using a range of cueing systems (for example, phonics and context clues) to determine pronunciation and meanings, putting events from the story in sequential order, and predicting outcomes and actions.” She still has weaknesses in language use and conventions, such as applying spelling rules and using resources to check spelling. She still has weakness in number sense and operations, such as developing strategies for basic addition facts such as one more, two more, identifying and stating the value of a penny, nickel, dime, quarter and dollar, determining the value (up to a dollar) of a small collection of coins (containing 1 or 2 different type coins) including pennies, nickels, dimes, and/or quarters, and developing strategies for subtraction of

⁴⁷ Exhibit 1F, pg. 9 Multifactorial Evaluation dated 3-27-03

⁴⁸ Exhibit 1F, pg. 10 Multifactorial Evaluation dated 3-27-03

⁴⁹ Exhibit 1F, pg. 11. Multifactorial Evaluation dated 3-27-03

⁵⁰ Exhibit 9F

⁵¹ Exhibit 9F pg. 13

⁵² Exhibit 3E pg. 4-5

⁵³ Exhibit 2E pg. 4-5

basic facts such as “all but one”, for example 8-7.⁵⁴ The School District subsequently decided that the best way to proceed with Jane’s education was to continue placing her in a self-contained special education class 100% of the time.⁵⁵

As a result of her academic struggles, Jane repeated the 4th grade. Subsequently, Jane has another 4th grade IEP, effective from April 6, 2005 to April 6, 2006. Jane can now read and comprehend at a 2nd grade level, but she still has problems decoding new words and misspelling high frequency words. She is still unable to count coins to 50 cents. She can still only tell time to the hour, half hour, and quarter hour.⁵⁶ The School District continued to provide Jane special education resources in a self-contained special education class throughout this school year.

Jane’s current IEP, valid for the 2006-2007 school year, shows that Jane has progressed minimally. Jane does not establish and adjust purposes for reading, including to find out, to understand, to interpret, to enjoy and to solve problems, predict and support predictions with specific references to textual examples that may be in widely separated sections of text, make critical comparisons across texts, summarize the information in texts, recognizing that there may be several important ideas rather than just one main idea and identifying details that support each, make inferences based on implicit information in texts, and provide justifications for those inferences, or select, create, and use graphic organizers to interpret textual information. Jane cannot use models and pictures to relate concepts of ratio, proportion, percent, including percents less than 1 and greater than 100. Jane is not able to interpret data presented on a graph consistently, and cannot create tables to record, organize and analyze data to discover patterns and rules.⁵⁷ The IEP concludes that Jane still needs special education services, but now also recognizes that placement in a self-contained classroom 100% of the time may be detrimental to Jane’s social development. As a result, Jane will be mainstreamed with the general class for gym, lunch, art, and music periods, while continuing to receive special education services for other academic areas.

The most recent evaluation of Jane’s impairments was conducted by Dr. C. on December 15, 2005. Jane was on Ritalin during this evaluation, and the results of the testing performed as part of Dr. C.’s evaluation represent her best anticipated performance. Jane’s WISC-IV Full Scale IQ score was 78, which puts her in the borderline range of intellectual functioning, and is a score that is approximately equal or better than only 7% of children her age.⁵⁸ Jane’s Woodcock test scores ranged from the 3rd percentile to the 23rd percentile, indicating her academic fluency ranged from a 1st grade level to a 3rd grade level.⁵⁹ At the time of testing, Jane was in the 4th grade, and had already repeated the 4th grade once. Jane’s score on the Oral and Written Language Scale, Listening Comprehension scale, was 70. Her listening comprehension abilities are 2 standard deviations below average for her same age peers.⁶⁰ Dr. C. observed, “[Jane] had difficulty in understanding things, especially directions, and they often needed to be repeated several times. She sometimes did not seem to understand questions that were asked of her. Jane’s expressive speech was sometimes not clear and difficult to understand due to poor grammar. On standardized measure of listening comprehension she scored in the borderline range and at the

⁵⁴ Exhibit 11F

⁵⁵ Exhibit 11F pg. 13

⁵⁶ IEP Report dated 4-6-05, Valid from 4-6-05 to 4-6-06

⁵⁷ IEP Report dated 4-12-06, Valid from 4-12-06 to 4-12-07

⁵⁸ C. Report, pg. 3-4

⁵⁹ C. Report, pg. 5

⁶⁰ C. Report, pg. 4

second percentile compared to her peers.”⁶¹ Dr. C. concluded that “Jane shows severe impairment in the area of cognitive functioning. Jane’s verbal abilities are in the borderline range and at the third percentile compared to her same age peers. Her full scale IQ was in the borderline range and at the seventh percentile compared to her same age peers. She therefore shows a severe impairment in intellectual abilities.”⁶²

Jane’s ADHD impairs her cognitive and communicative functioning. Jane has repeated the 4th grade, and will be in the 5th grade during the 2006-2007 school year, yet her academic abilities remain at a 1st grade level. She is eleven years old, yet she still cannot effectively read, write, or perform simple arithmetic functions. Her performances on standardized tests, in school, and in her daily life indicate that she has marked impairment in cognitive and communicative function.

ii. Jane has marked impairments in the ability to maintain concentration, persistence, and pace.

In a questionnaire dated January 14, 2004, Sandra Doe provides a great deal of information that shows that Jane has marked impairments in maintaining concentration and persistence, and in completing tasks. Jane is in need of constant supervision; if Jane is not supervised, she’ll “[always get into things that she knows not to touch.]”⁶³ Jane does not stay focused on simple tasks or projects, for example, “[If Jane is reading a book, she will want to stop in the middle of the book and she will want to color in a coloring book- but the problem is that coloring book is at someone else’s house, and then she won’t want to play with that person anymore...]”⁶⁴ Ms. Doe observed that, “[Jane doesn’t finish anything- she’ll start one thing, just to start another. If Jane is told to dress, 20 minutes will pass, and Jane will be half dressed and playing with toys, or doing something else. This is every day.]”⁶⁵ Ms. Doe indicated that she can’t even time how long Jane will watch a TV show, because as soon as she turns her back, Jane will be doing something else.⁶⁶ If Jane has math homework, she will start it, then will do “10 other things before she will attempt to finish it, and then she will lose it.”⁶⁷ Sometimes Ms. Doe will ask Jane to do simple things, like go to another room and retrieve the mail, but time will pass and Jane will be found doing something else.⁶⁸

Ms. R., Jane’s Special Education teacher, indicated in a teacher questionnaire dated January 30, 2004, that Jane’s ability to maintain concentration, persistence, and pace functioning is not age appropriate. Ms. R. noted, “She is easily distracted by her classmates or anyone/anything. She has to be reminded to stay on task...”⁶⁹

⁶¹ C. Report, pg. 6-7

⁶² C. Report, pg. 6-7

⁶³ Exhibit 1E, pg. 1, “Yes, supervision is always needed, if not Jane is always into things that she knows not to touch...”

⁶⁴ Exhibit 1E pg. 1 and the back of pg. 1, “...if Jane is reading a book she will stop in the middle of the book and beside she want to color in a coloring book But the problem is she want the coloring book at some one else haves. And then she don’t want to play with that person anymore.”

⁶⁵ Exhibit 1E pg. 2, “It’s a trail every day. Jane don’t finish anything Jane start one thing to another... If Jane is told to dress and 20 min. is gone Jane is half dress and playing with toys or doming something else and that everyday.”

⁶⁶ Exhibit 1E, pg. 2

⁶⁷ Exhibit 1E, pg. 2, “If Jane have math homework she will start it then will do 10 other things before whe will attempt to finish, and will lose it.”

⁶⁸ Exhibit 1E, pg. 2-3

⁶⁹ Exhibit 2E

Furthermore, as indicated previously in section I, part B, sub-part 1, there are medically documented findings that Jane has marked impairments in concentration, persistence, and pace. In 2003, Dr. N. diagnosed Jane with ADHD based in part on results obtained from the Conners ADHD/DSM-IV Rating Scales evaluation.⁷⁰ The Conner's evaluation indicated that Jane had marked difficulties with inattention, hyperactivity, and impulsivity; all of Jane's scores were at least two standard deviations greater than the mean.⁷¹ In 2005, Dr. C. evaluated Jane for her ability to maintain concentration and persistence. Dr. C. administered the Conners ADHD/DSM-IV Rating Scales and also the Integrated Visual and Auditory Continuous Performance Test as part of his evaluation. Jane's scores were either beyond the 99th percentile, greater than 2 standard deviations from the mean, or in some circumstances so extreme as to be uninterpretable.⁷² Dr. C. subsequently concluded that, "Jane shows severe impairment in her ability for attention, concentration, and persistence."⁷³

Jane's ADHD impairs here ability to complete simple tasks and to pay attention for any significant amount of time. She is 11 years old, but is unable to focus long enough to bathe and dress herself, complete work, or watch TV. Her performance on standardized tests, in school and in her daily life indicate that she has marked impairment in concentration, pace and persistence.

iii. Jane has marked impairment in age-appropriate social functioning.

As part of her evaluation of Jane on June 4, 2003, Dr. N. administered the Child Behavior Checklist ("CBCL") Teacher's report form to Jane's teacher, Ms. E., and obtained the following results: Withdrawn- 83, Somatic Complaints- 50, Anxious/Depressed- 66, Social problems- 68, Thought problems- 50, Attention problems- 83, Delinquent problems- 64, Aggressive problems- 66; Summary Scores: Internalizing- 68, Externalizing- 67, Total problems- 72.⁷⁴ The test is a standardized test, with a mean of 50, standard deviation of 10. Jane's scores are greater than 2 standard deviations from the mean, and indicate that she has marked impairments in her social functioning as well as impairments in her ability to maintain attention. Dr. C. noted in his report that Jane tends to keep younger friends, and has difficulty with sharing with others and tantrums.⁷⁵

Progress notes kept by Jane's health care providers contain additional evidence of impaired social functioning. In his initial evaluation of Jane on October 15, 2002, Dr. J. noted that "Her behaviors in school have become whiny, pouting and tearful... She seems jealous of a 2 year old grandson in the home."⁷⁶ On October 29, 2002, Dr. L. noted, "She is inattentive, disruptive of others, has a short attention span, is impulsive, is generally disrespectful of others rights, interrupting, etc."⁷⁷ Dr. N. noted on May 5, 2005, that she, "Worked with Jane on dealing with name calling. Jane says she has difficulty ignoring it even after she told the teacher. She has even hit someone because of it."⁷⁸ On November 7, 2005, Dr. N. "Worked with Jane on

⁷⁰ Exhibit 8F, pg. 20, Medical Records from 5/03 – 4/04

⁷¹ Exhibit 8F, pg. 19, Medical Records from 5/03 – 4/04

⁷² C. Report, pg. 3-4

⁷³ C. Report, pg. 7

⁷⁴ Exhibit 8F, pg. 19, Medical Records from 5/03 – 4/04

⁷⁵ C. Report pg. 2

⁷⁶ Exhibit 3F, pg. 28

⁷⁷ Exhibit 3F, pg. 27

⁷⁸ Medical Record, 5-5-05

managing being teased by peers...Discussed turning the tease into something humorous. [But] Jane seemed to have a difficult time doing this.”⁷⁹

In addition to a diagnosis of ADHD, Dr. N. also diagnosed Jane with Adjustment Reaction NOS on July 15, 2003, and has been helping Jane deal with several adjustment issues ever since then.⁸⁰ Dr. N.’s treatment goals for Jane include fear management, compliance with rules, and also emotional coping skills. Dr. N. diagnosed Jane with adjustment reaction in part because of family issues that negatively impact Jane’s social and emotional well-being. As previously noted, Jane has been in the custody of her adoptive grandmother since she was 18-months old. Jane would like to live with her biological mother; however it is not clear whether Jane’s mother can appropriately care for Jane. Dr. N. has devoted a significant amount of treatment time to helping Jane cope with, “... the emotional ups and downs of thinking that she can live with [her] mother only to have that not work out.”⁸¹

In a teacher evaluation form dated, January 30, 2004, Jane’s special education teacher, Ms. J., indicated that that Jane’s social functioning is not age-appropriate, and that her impairment in social functioning interferes with her academic and social success on a daily basis. Ms. J. noted, “[Jane] doesn’t interact with her classmates and only talks to me (the teacher.) She doesn’t want to eat in the lunchroom. She gets very upset when she has trouble [with] something.”⁸²

The MFE conducted by the Cleveland Municipal School District included evaluations of Jane’s adaptive behavior and social/emotional status. On the Normative Adaptive Behavior Checklist- Revised, Jane scored a rank of low-average in the area of social skills.⁸³ On the social/emotional status assessment, Jane scored in the borderline range in the area of Withdrawn (T=68) and the area of Social Problems (T=69).⁸⁴

Jane’s ADHD negatively affects her social functioning. Jane does not have age-appropriate relationships and friendships with her peers at school. She also does not deal with social situations and emotional stressors in an age-appropriate manner. Her performance on standardized tests, in school and in her daily life indicates that she has marked impairment in age-appropriate social functioning.

iv. Jane has marked impairment in age-appropriate personal functioning.

As part of his evaluation of Jane in 2005, Dr. C. also administered the Vineland Adaptive Behavior Scales. Jane scores were the following: Communication- 56, Daily Living Skills- 62, Socialization- 73, and Adaptive Composite- 62. Jane’s scores in the areas of communication, daily living skills, and the adaptive composite were at, or lower than the 1st percentile for her age level. Dr. C. noted that her weakest area in the domain of Daily Living Skills was in the area of personal care.

⁷⁹ Medical Record, 11-7-05.

⁸⁰ Exhibit 8F pg. 16,

⁸¹ Medical Record, 7-15-2003

⁸² Exhibit 2E, pg. 7

⁸³ Exhibit 1F, pg. 11

⁸⁴ Exhibit 1F, pg. 11

As previously noted, the MFE conducted by the Cleveland Municipal School District administered the NABC-R, and found that Jane had low performance rankings in two areas of adaptive behavior: the area of independent living and the area of language and academics.

As previously noted, Ms. Doe has observed that Jane struggles to perform daily activities such as dressing herself and getting the mail. Jane also struggles with appropriate behaviors necessary to care for herself. For example, Ms. Doe and daycare providers have observed that Jane has a habit of hiding food under her bed, or in the corners of her chair.⁸⁵ Ms. Doe also observed that Jane had difficulty learning and recalling her address and phone number after the family had changed residences.⁸⁶ Ms. Doe and Jane's teachers have also observed that in the past Jane would miss her afternoon dose of Ritalin either because she forgets, or because she doesn't like her medication.⁸⁷

Jane's ADHD impairs her ability to appropriately care for herself. Jane's hyperactivity, impulsiveness, and cognitive impairments interfere with her ability to perform tasks necessary for personal care, such as appropriate food-handling, putting on clothes, or taking her medication. Her performances on standardized tests and in her personal life indicate that she has marked impairment in age-appropriate personal functioning.

II. Jane's impairments results in limitations that functionally equal a listing.

If it is found there is not sufficient evidence to support a finding that Jane meets Listing 112.11(ADHD), then she should be found eligible for benefits because her impairments functionally equal a listing. Jane's impairments functionally equal a listing because she experiences marked impairments in the ability to acquire and use information, in the ability to attend to and complete tasks, in the ability to interact and relate with others, and in the ability to care for herself.

A. The legal standard for functional equivalence in children.

Functional equivalence exists where a claimed impairment is of listing level severity. A claimed impairment is of listing level severity where the claimed impairment results in marked limitation in two domains of functioning.⁸⁸

A marked limitation exists when the impairment seriously interferes with ability to independently initiate, sustain, or complete activities. Day-to-day functioning may be seriously limited when impairments limit only one activity or when the interactive and cumulative effects of your impairments limit several activities. "Marked" limitation also means a limitation that is "more than moderate" but "less than extreme." It is the equivalent of the functioning consistent with standardized test scores that are at least two, but less than three, standard deviations away below the mean.⁸⁹

⁸⁵ Exhibit 11E pg. 9

⁸⁶ Exhibit 2F pg. 3

⁸⁷ Medical Record dated 4-27-06

⁸⁸ 20 CFR pt. 416, Section 926a

⁸⁹ 20 CFR pt. 416, Section 926a

B. Jane suffers marked limitation in 1) acquiring and using information, 2) in attending and completing tasks, 3) in interacting and relating with others, and 4) in caring for herself.

1. The domain of acquiring and using information.

Jane is 11 years old, yet as a result of her impairments, she cannot read, write, do basic arithmetic, or discuss history and science in an age-appropriate manner. Jane's reading abilities are at a 1st to 2nd grade level.⁹⁰ She does not comprehend much of what she is reading, and does not understand the purposes of reading.⁹¹ Jane's writing abilities are at a 1st to 2nd grade level.⁹² She struggles with basic grammar concepts, such as the capitalization of the first letter of sentences, and the use of periods at the end of sentences.⁹³ Jane's math and calculation skills are at a 1st to 3rd grade level.⁹⁴ She cannot relate concepts of ratio, proportion and percent to pictures. For example she cannot relate the concept of 50% to a picture of half a pizza.⁹⁵ Jane still has difficulty determining the value of a small collection of coins less than a dollar.⁹⁶

Jane's ability to acquire and use information is severely impaired by her inattention, impulsivity, and borderline intellectual functioning. She cannot carry out basic, age-appropriate day-to-day activities such as counting change or reading books. Jane has marked limitations in the domain of acquiring and using information.

2. The domain of attending to and completing tasks.

Jane has extreme difficulties in finishing simple tasks. She has trouble fully dressing herself, and has needed significant supervision and help to be able to clothe herself.⁹⁷ She has difficulty completing her homework, and tasks such as retrieving the mail.⁹⁸ She has difficulty watching TV long enough to grasp what is on the TV. Jane's scores on standardized tests of inattention, impulsivity, and hyperactivity are all greater than 2 standard deviations from the mean. Jane has marked limitations in the domain of attending to and completing tasks.

3. The domain of Interacting and relating with others.

Jane has trouble relating with others and dealing with other people in a social setting. Both Jane's teachers and doctors have observed that she is very withdrawn, and does not interact well with other children her age.⁹⁹ Jane has demonstrated difficulty in complying with rules, responding to teasing, and to sharing of items such as toys.¹⁰⁰ Jane has also struggles with a lack of respect for others, and interrupting while others are speaking.¹⁰¹ Jane has marked limitations in the domain of interacting and relating with others.

⁹⁰ C. Report pg. 5

⁹¹ 2006-2007 IEP pg. 2

⁹² C. Report pg. 5

⁹³ 2006-2007 IEP pg. 7

⁹⁴ C. Report pg. 5

⁹⁵ 2006-2007 IEP pg. 4

⁹⁶ 2005-2006 IEP pg. 6

⁹⁷ C. Report pg. 2

⁹⁸ Exhibit 1E

⁹⁹ Exhibit 2E pg. 7

¹⁰⁰ C. Report pg. 2

¹⁰¹ Exhibit 3F pg. 27

4. The domain of caring for yourself.

Jane has demonstrated difficulties in caring for herself. Standardized tests indicate that she is not able to care for herself in an age-appropriate manner.^{102 103} Ms. Doe has observed that Jane has difficulty dressing herself without supervision, and has difficulty remembering her own phone number and address.^{104 105} Ms. Doe and Jane's teachers have also observed that Jane does not take her medication unless she is reminded or supervised.¹⁰⁶ Ms. Doe and Jane's daycare providers have observed that Jane hides food in inappropriate places.^{107 108} Jane has marked limitations in the domain of caring for oneself.

Conclusion

Jane qualifies for Supplemental Security Income Disability Benefits because her impairments meet listing 112.11, ADHD. Jane meets listing 112.11 because she has 1) medically documented findings of marked hyperactivity, inattention and impulsivity, and 2) marked impairment in cognitive/communicative function, social function, personal function, and marked difficulties in maintaining concentration persistence and pace. If it is found that there is not sufficient evidence to support a finding of marked impairment in all the areas, Jane's impairments functionally equal a listing because she experiences marked impairments in the ability to acquire and use information, in the ability to attend to and complete tasks, in the ability to relate and interact with others, and in the ability to care for herself.

Respectfully submitted,

Attorney for Sandra Doe o/b/o
Jane Doe

¹⁰² Exhibit 1F pg. 11

¹⁰³ C. Report pg. 6

¹⁰⁴ C. Report pg. 2

¹⁰⁵ Exhibit 2F pg. 3

¹⁰⁶ Medical Record dated 4-27-06

¹⁰⁷ C. Report pg. 2

¹⁰⁸ Exhibit 1E pg. 1