

In Re Jane Doe

SSN:

Brief in Support of Application for SSI

Date/Time of Hearing:

I. BACKGROUND

Jane Doe, now age 20, was exposed to drugs in utero and was noted to be a failure to thrive infant. She was eventually placed into foster care with Mrs. P, now her legal guardian and with whom she still lives. Jane has an intellectual impairment that qualified her for D and F-rate participation with respect to foster care benefits.¹ Her limitations compelled her participation in special education from an early age. However, despite a supported education, in 2005 she was still functioning at a 5th grade or lower level. When it was finally determined that a vocational rather than an academic track might be more appropriate, her effort in a vocational program for low functioning students failed. Three times she was unable to sustain menial work attempts despite extensive support.

Jane does not drive and has learned to take the bus for limited distances only and without transfers. However, she is not safe in public as she is susceptible to influence and extremely vulnerable. Twice she has been lured away by strangers, once from a bus stop by a man who kept her for several days and sexually abused her before releasing her back to the bus stop.

A dependency court judge stayed Jane's emancipation from foster care so she could continue to receive foster care funding pending receipt of Supplemental Security Income (SSI). Accordingly, Jane's social worker applied for SSI sometime in 2005 when she was still a

¹ D and F rates are specialized care rate that L.A. County provides for foster children with severe medical, behavioral and developmental disabilities.

minor. Her limitations also recently qualified her for Regional Center services. Now, at age 20 she makes this claim for benefits pursuant to CFR 12.05 for mental retardation. However, to the extent that her application preceded the age of majority, and for purposes of a retroactive payment to the date of application, Danielle also met the criteria for SSI pursuant to the regulations relevant to children and disability.

II. Jane's disability meets Listing 12.05: Mental Retardation (20 C.F.R. Part 404, Subpart P, Appendix 1)

Mental retardation refers to significantly sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset before age 22. Jane fulfills 12.05D which requires a documented full scale IQ of 60 through 70 resulting in at least two of four criteria. While only two are required, Jane meets or exceeds three:

1) marked restriction of activities of daily living; 2) marked difficulties in maintaining social functioning; and 3) marked difficulties in maintaining concentration, persistence, or pace.

A. Jane has an IQ between 60 and 70.

On December 5, 2006 Jane's performance on the Wechsler Adult Intelligent Scale-III measured her Full Scale IQ at 66. **See report of Ed.D attached hereto as Exhibit A, pg. 5.** The evaluation was conducted pursuant to a request for Regional Center Services. **See Regional Center letter, attached as Exhibit B.**

As summarized in the report of Dr. X, Ph.D., Jane has consistently scored in the requisite range since she was six years old. **See Psychological Evaluation attached as Exhibit C.**²

1/22/1993	Wechsler Intelligence Scale for Children - Third Edition (WISC-III) Verbal IQ: 70 Performance IQ: 64 Full Scale IQ: 64
5/9/1998	WISC-III Verbal IQ: 73 Performance IQ: 72 Full Scale IQ: 71
6/5/2002	WISC-III Verbal IQ: 58 Performance IQ: 64 Full Scale IQ: 64
2/4/2003	Stanford-Binet Composite: 68
10/30/2005	Wechsler Adult Intelligence Scale - Fourth Ed. Verbal IQ: 67 Performance IQ: 75 Full Scale IQ: 68 Woodcock-Johnson Total Achievement: 66

According to Dr. X, not only has Jane rated as mentally retarded from an early age, but the Regional Center's repeated denial of her until recently was based on the fact that she had a mere learning, rather than developmental, disability - a diagnosis that was a result of mistakes, errors in determination, errors in submission of information, and other similar problems. **Id. at Pg.4.**

1. Jane suffers marked restrictions in her activities of daily living.

Jane presents as an attractive, well-dressed and pleasant young woman. However, without constant reminders from Mrs. P, Jane will not take the initiative to shower or change her clothes. She needs

² Dr. X notes that the only time since age 6 that Jane did not score in the retarded range was when she scored a 71 in 1998 - "a score within in the margin of error of the retarded range." **Ex. C at pg. 3.** Further, the insignificant deviation gives rise to an argument that given Jane's overall pattern of demonstrating functioning at the retarded range, her intellectual impairment is functionally equivalent to that of a listed impairment.

supervision during her menstrual cycle and with other personal hygiene. Jane can only cook very simple foods, such as scrambled eggs. She cannot sew buttons or do laundry. She cannot keep her living space clean without direction and supervision. Jane needs repetitive direction to stay on task. She is unable to follow more than two instructions at a time, if even that. According to Mrs. P, if Jane is asked to do something, she will not follow through unless Mrs. P essentially stands over her. She has learned to ride the same bus on a very limited basis and without transfers. However, Mrs. P must repeatedly remind her of the bus number. On more than one occasion Jane has ridden the correct bus, only to miss her stop resulting in her being lost in the city until located by police. Jane's tendency to become disoriented is not limited to the bus. Dr. X reported "It is of interest that half way through the testing, Jane needed to use the restroom virtually just across the hall from the office of this psychologist. Yet, she got lost and could not find her way back to the office (a distance of about 20 feet)!" **See Exhibit C at Pg. 4.**

Her lack of orientation and her blind trust in strangers cast serious doubt on her ability to safely use public transportation alone. In fact, Jane was expelled from East Valley College where she was participating in a transitional occupational program because the bus stop incident caused the school to worry that Jane was a potential liability.

Despite her many years of special education, Jane struggles with reading. She is a slow reader and according to an academic evaluation in 2004, Jane often didn't understand things she read. **Exhibit D.** Although IEPs have repeatedly set goals that she learn basic arithmetic, Jane cannot deal with finances. Jane's 12th grade IEP, ,

indicates that, with respect to math, "[Jane} STILL NEEDS BASICS MASTERED." ³ Jane's therapist wrote in 2004 that Jane has great difficulty dealing with simple mathematical concepts. "She can add 4+4, but if asked what half of 8 is, she is at a loss." **Exhibit D.** Even telling time is a problem. At age 13, Jane's IEP listed as an educational goal that Jane "will tell time to the hour, half-hour, and quarter hour w/ 75% accuracy." However, a later IEP states that Jane still could not tell time at age 15 because she "has difficulty conceptualizing the traditional clock concept." In 2004, her therapist wrote that Jane "can recognize 3:40 but doesn't know what 20 minutes to 4 means." **Exhibit D.** Jane's foster mother reports that Jane still has difficulty understanding and telling time.

In sum, Jane is not yet ready to live on her own, much less support herself with full time gainful employment. Her therapist noted that Jane is not capable of independent living. **Exhibit D.** Psychologist Evans stated that "Jane will need specialized instruction for attaining independent living skills." Even after that she would need a "supervised" living situation and a "sheltered" work environment. **See Therapeutic Foster Care Assessment page 5, attached as Exhibit E.** Evans stated that "Jane will likely require ... conservator supervision as an adult," indicating Jane's inability to manage her own affairs on a day-to-day basis. **Id.**

2. Jane experiences marked difficulties in maintaining social functioning.

In 2004, psychologist Evans reported that Jane was awkward, and didn't know how to establish relationships with peers. She stated that Jane would need a long-term socialization program to develop community

³ All IEPS referenced in this brief will be available at hearing.

functioning. **Exhibit H at page 5.**In 2005, Dr. X found that Jane had no friends or hobbies. He wrote, "There are a variety of problems that Jane seems to have in responding to the demands placed on her within her environment. She does not seem to know certain basics as to how to respond to social settings and challenges." **Exhibit C at pg. 11.** Jane was administered the Vineland Adaptive Behavior Scales test on a number of occasions over the years and her scores have consistently fallen short of the norm. **See Dr. X's summary, Ex.C, at pages 5 - 10.** She did not fare much better in December 2006. **See Exhibit A.** Most disturbing about Jane's lack of social insight is her apparent inability to protect herself in the world. Notwithstanding the bus stop incident, Jane recently packed her bags at the encouragement of a contractor/stranger and was preparing to leave with him before Mrs. P intervened. Jane's inability to understand social situations poses a huge threat to her safety. Jane's instructor at the Center for Transitional Assistance wrote in 2005 that "Jane is easily influenced by others, even when her own personal safety is concerned. For this reason we feel that Jane should be in a supervised environment such as a support employment program with counselors and work supervisors." **See letter dated July 11, 2005, attached as Exhibit I.**

3. Jane has marked difficulties in maintaining concentration, persistence, or pace.

There are references throughout Jane's history to her short attention span and poor retention: "Attention Deficit Disorder". "jumpy and distractible... With less structure, her behavior and the maturity of her language and actions deteriorated." **Report of Dr. Jones, Ex.F** ; Psychologist Harvey S. reported on 6/7/1993 that Jane

couldn't concentrate or retain information, that she couldn't sit still, and that she was restless or hyperactive. **Exhibit G.** "very easily distracted;" (IEP - 6/20/97); "difficulty staying on task" (IEP- 6/16/98. "often needs one-on-one support to keep doing her work." IEPs- 12/3/02 and 10/30 03.

Jane also has trouble with memory and with keeping pace. In her report of 5/9/1998, psychologist Rose Kane wrote that it took Jane a long time to respond to verbal requests. Kane pushed her to respond at a normal pace, but she could not sustain the pace for very long. **Exhibit H.** Psychologist Evans noted in her 6/29/2004 evaluation that ability to recall two-part instructions was a problem for Jane.

Exhibit E. Psychologist X reported that Jane needed questions and directions repeated often during her evaluation on 10/30/2005. **Exhibit C.**

Her inability to concentrate, remember and follow directions impacts her ability to work at the most menial of jobs. In fact, Jane failed at three different jobs while attending the Center for Transitional Assistance at East Valley Community College. This program is designed to help low-functioning students succeed in work. In 2005, Jane's instructor, described Jane's performance in her jobs as follows:

"Since Jane has attended this program she has had three different voluntary work experience opportunities. In each voluntary work situation Jane started out with the full support of a job coach and when it was felt that she had mastered the work duties the support was faded. In each work situation without the full support of the job coach, Jane was let go from her job after a period of time because she *could not stay focused on her work* and the quality of work

deteriorated to the point that the managers felt it was best that she not continue working there... based on the evaluations by her job coaches and the work site managers it is doubtful that Jane could maintain full time employment without extensive support." **See July letter from Instructor attached as Exhibit I.** When Jane was in the middle of her work training program, her instructor stated that Jane needed to build stamina for working, as she could only work three hours a day. The instructor also stated that even after training Jane would need easy directions, and work assignments clarified several times. Two months after these statements, the instructor came to the conclusion that Jane would simply not be able to work independently.

Id.

III. Jane's onset of disability preceded age 18 and qualified her for benefits pursuant to the childhood listings at 112.05 (Mental Retardation) and further establishes that her disability has lasted and can be expected to last for more than 12 months.

As per Dr. X's summarized report, Jane tested as mentally retarded when she was six years old. She fell within the full scale IQ range of 60 to 70 set forth in 112.05E and met the requisite degree of severity required in (1) and (2). Jane's mental disabilities have prevented her from working thus far in her 20-year life, and will certainly continue to prevent her from working beyond 12 months into the future.

IV. Conclusion

Not only does Jane fall within the 12.05D IQ and 112.05E ranges, but she meets the requisite accompanying criteria. In school settings, in clinical settings, social settings, and work settings, Jane is unable to maintain concentration, persistence, or pace. Moreover, her inability to protect herself from predators and other dangers means

that she probably will never be able to work independently without transportation, supervision, and the constant eye of others.

For the foregoing reasons, Claimant requests that her application for Supplemental Security Income be granted.

Respectfully Submitted
