

**VINCENT J. CRISCUOLO  
ATTORNEYS AT LAW  
900 REYNOLDS ARCADE  
16 EAST MAIN STREET  
ROCHESTER, NEW YORK 14614**

---

(585) 232-3240  
(585) 232-3522 (fax)

**SPENCER D. PARR**  
ASSOCIATE ATTORNEY

April 1, 2006

Office of Hearings & Appeals  
300 Pearl Street, 4<sup>th</sup> Floor  
Buffalo, NY 14202

**RE: Jane E. Doe**  
**SSN: 222 -22-2222**

**MEMORANDUM:**

Jane E. Doe asserts a Supplemental Security Income claim at listing level severity. Specifically, Ms. Doe's impairments meet or equal the severity requirements of 20 C.F.R. Part 404, Subpt. P, App. 1, § 12.05C. The requirements of Section 12.05C are met when the claimant demonstrates: 1) a valid IQ score of 60 through 70; 2) manifestation of deficits in adaptive functioning prior to age 22; and 3) any additional physical or mental impairment imposing a significant work-related limitation of function. The precise wording of the listing is as follows:

**Section 12.05:**

“[S]ignificantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence supports onset of the impairment before age 22.”

And:

**Section 12.05C:**

“A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function.”

### **Ms. Doe has a Valid IQ Score of 60 - 70:**

Here, Ms. Doe can prove the first requirement of Section 12.05C. Specifically, Ms. Doe was administered an *Intellectual Evaluation* by Melvin R Pax, Ph.D. of Care and Medicine Associates of Rochester, PC. On June 30, 2004. (Exhibit B-3F). Dr. Pax reports at page 2 of Exhibit B-3F that at the time of testing, Ms. Doe's "[p]osture and moter behavior were normal and eye contact appropriate. Speech and language skills were adequate and she was cooperative and relaxed throughout the session. She recalled and understood instructions. Attention was good. She did not evidence significant emotional distress during the evaluation and the results are considered to be valid and reliable estimates of current functioning." The scores documented by Dr. Pax at page 3 of Exhibit B-3F include a verbal IQ of 66, a performance IQ of 84, and a full scale IQ of 72. Thus, substantial evidence demonstrates that Ms. Doe has a valid IQ of 60 through 70 and meets the first requirement of Section 12.05C.

### **Ms. Doe Suffered Manifestation of Deficits in Adaptive Functioning Prior to Age 22:**

Here, Ms. Doe can prove the second requirement of Section 12.05C through reference to her elementary school records. When Ms. Doe was 16 years old she was transferred from the Rush-Henrietta School District to Jefferson High in the city of Rochester. Under the comment block entitled "SPECIFIC INFORMATION FOR INTIATION OF REFERRAL", the school district noted as follows:

*"Jane is a new entrant from the Rush-Henrietta School District. She was designated a handicapped student and attended a special education class at the foreman center through BOCES. She apparently did not make significant academic gains in this program. Patient is requesting appropriate class placement in city school district program."*

Under the “COMMENTS” block on the same page, Ms. Doe’s school record states:

*“Student was classified as handicapped prior to entering Jefferson High & review of the material submitted supports that the handicapping still exists.”*

After testing completed on November 7, 1982, Ms. Doe’s mental age was fixed at 11 years and 1 month, a full 5 years and 1 month delayed from her chronological age peers. In some areas such as word knowledge, Ms. Doe’s ability was ranked in the bottom 1% nationally. Richard A. Fansen, Certified School Psychologist also observed the following using various testing modalities to make his assessment:

*“On the Wide Range Achievement test, Jane achieved a reading recognition level equivalent to grade 3.6 and a math level equivalent to grade 4.6...Review of Jane’s academic records indicate instructional level at 4 – 5 grade level. It must be noted that Jane has serious difficulties processing auditory stimuli. In the examiner’s opinion the classroom behavior, the poor academic progress, difficulties with auditory stimuli and the significant forty-five point discrepancy between the verbal and performance IQ scores seem to indicate characteristic of specific learning disability – auditory receptive aphasia.”*

Next, Gracie Jordan, the Principal in Ms. Doe’s new elementary school commented in writing on January 12, 1983 as follows:

*“This child is unable to ride the normal school bus due to problems associating with her age-level peers. It seems she constantly finds a way to be in the middle of trouble, although she is seldom the actual cause. Other children seem to search her out to pick on her, or to take her things away, because she is so easily brought to tears and cannot find a way to express that her own possessions are hers. She seems to have no social skills whatsoever. As a result, I have ordered a special accommodation so that Jane will be picked up and dropped off each day in a vehicle containing not more than two other children.”*

Thus, because Ms. Doe’s elementary education was limited to Special Education, because her mental age was only two-thirds of her chronological age, because she was in the bottom percentile of students her age concerning word knowledge, because a Certified School Psychologist identified a specific learning disability, and because Ms. Doe’s Elementary School Principal noted her ongoing difficulties associating with her peers, it is certain that Ms. Doe suffered deficits in her adaptive functioning prior to age 22.

**Ms. Doe has Several Additional Physical or Mental Impairments which Singly, or in Combination, Impose significant work-related limitations:**

Here, Ms. Doe can prove the third requirement of Section 12.05C even if simply by pointing to the June 30, 2005 Medical Evaluation performed by Dillon S. Pickler, MD (Exhibit B-17F), and the clarifying narrative addressed to this office after our inquiry. Specifically, Dr. Pickler agreed that Ms. Doe suffers from Bipolar Disorder, Asthma, Arthritis and Obesity. Dr. Pickler listed these diagnoses and then stated as his Impression as follows in his narrative:

*“I fear that her prognosis is on the poor side. This individual will have significant difficulties navigating even the simplest daily routine, let alone venturing into a vocational setting. Her Morbid Obesity, Arthritis, and Asthma undoubtedly combine to impose such limitations that she would not be capable of more than sedentary-type work, and then only indoors. In addition, her cyclothymic mood swings would also require she be kept from virtually all stressful situations. This is because any significant stress at all is likely to cause this individual episodes of acute decompensation. For these reasons I doubt Jane Doe is even employable, medically speaking.”*

Thus, because Dr. Pickler doubts Ms. Doe is capable of performing even simple, routine tasks, and then only at the sedentary exertion level (indoors), due to the combination of her Bipolar Disorder, Asthma, Arthritis and Obesity, the adjudicator here cannot arrive at any alternate conclusion. There is simply no other evidence in the record, let alone highly competent medical evidence such as Dr. Pickler’s narrative, stating the probable effect of Ms. Doe’s impairments when these are considered in combination. Thus, these combined impairments must be adjudicated to impose significant work-related limitations to her function.

**Conclusion:**

For all the above reasons, Ms. Doe urges a finding of “disability” under the Social Security Act. Ms. Doe specifically contends that her impairments meet or equal the listing level severity indicated at 20 C.F.R. Part 404, Subpt. P, App. 1, § 12.05C.

Respectfully Submitted,

**LAW OFFICE OF VINCENT J. CRISCUOLO**

**SPENCER D. PARR, Esq.**