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Dated: December 16, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

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SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 03-1(7)]

Blakes v. Barnhart; Court Cases Involving Sections 12.05 and 112.05 of the Listing of Impairments That Are Remanded for Further Proceedings—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 03-1(7).

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Cassia Parson, Office of Acquiescence and Litigation Coordination, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-0446, or TTY (800) 966-5609.

SUPPLEMENTARY INFORMATION: We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling. This Social Security Acquiescence Ruling will apply to all decisions where the Agency issued a final decision prior to the effective date of the 2000 mental impairment rules (September 20, 2000), and the Commissioner's new final decision after court remand was issued or will be issued on or after December 23, 2003. If we made a decision on your application for benefits prior to September 20, 2000, under Sections 12.05 and or 112.05 of

the Listings of Impairments and the court remanded the case to us for further administrative proceedings, you may request application of this Social Security Acquiescence Ruling. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: October 31, 2003.

Jo Anne B. Barnhart,
Commissioner of Social Security.

Acquiescence Ruling 03-1(7)

Blakes v. Barnhart, 331 F.3d 565 (7th Cir. 2003)—Cases Involving Sections 12.05 and 112.05 of the Listing of Impairments That Are Remanded By a Court for Further Proceedings Under

Titles II and XVI of the Social Security Act.

Issue: For cases originally decided by Administrative Law Judges (ALJs) or the Appeals Council before September 20, 2000, which version of listing 12.05 or 112.05 to use on remand from a Federal court in the Seventh Circuit, and how that listing should be applied.

Statute/Regulation/Ruling Citation: Sections 205(b) and (g), 223, 1614(a)(3) and (4) of the Social Security Act (42 U.S.C. 405(b) and (g), 423, 1382c(a)(3) and (4)); 20 CFR 404.1505, 404.1520, 404.1520a, 404.1525, 416.905, 416.906, 416.920, 416.920a, 416.924, 416.925, and 20 CFR Part 404, Subpart P, Appendix 1, sections 12.05 and 112.05.

Circuit: Seventh (Illinois, Indiana, Wisconsin).

Blakes v. Barnhart, 331 F.3d 565 (7th Cir. 2003).

Applicability of Ruling: This Ruling applies only to court remands at the Administrative Law Judge (ALJ) hearing and Appeals Council levels of the administrative review process.

Description of Case: Sandra Blakes applied for Supplemental Security Income payments based on disability on behalf of her son, Lamanuel Wolfe, Jr., in 1998, when Lamanuel was 5 years old. At the ALJ hearing, Blakes presented evidence that Lamanuel was being treated for a seizure disorder and had received services for speech and language delays. There was also evidence of Stanford-Binet IQ testing in February 1999 that resulted in a composite score of 81 and subarea scores as low as 70.

The ALJ accepted the intelligence testing scores as valid. The ALJ also acknowledged that Lamanuel was receiving services for speech and language delays and being treated for a possible seizure disorder. The ALJ noted a speech and language assessment which demonstrated severe delays in speech intelligibility and receptive and expressive language. However, the ALJ rejected Lamanuel's claim that the requirements of the listing for mental retardation were met because the evidence did not establish that Lamanuel had mental retardation. The ALJ stated that the examiner who performed the intelligence testing specifically stated that Lamanuel had a good prognosis, and that his language problems caused only minimal effects on his activities of daily living. In light of that examiner's findings, the ALJ concluded that the evidence did not describe a person who has mental retardation. The ALJ also found that Lamanuel's impairments did not medically equal any listing or

functionally equal the listings. Therefore, she found that Lamanuel was not disabled.

The Appeals Council denied the request for review and the claimant appealed to the United States District Court for the Eastern District of Wisconsin. The United States Magistrate Judge recommended that the ALJ's decision be affirmed, because the conclusion that Lamanuel did not have mental retardation was supported by substantial evidence. The district court adopted the Magistrate Judge's report and recommendation, and found that the ALJ had adequately supported her conclusion that Lamanuel did not have mental retardation. The district court therefore affirmed the Social Security Administration's (SSA's) final decision.

On appeal to the United States Court of Appeals for the Seventh Circuit, Blakes offered several arguments. Blakes argued that the ALJ failed to build a "logical bridge" between the evidence and her conclusions, and that the ALJ relied on her own judgment about the cause of Lamanuel's impairments without any medical support in the record for that judgment. In addition, she argued that the ALJ should have called upon a medical expert to testify at the hearing, and that Lamanuel's impairments met the requirements of Listing 112.05D.¹

In remanding the case for further proceedings, including testimony from an expert witness, the Court of Appeals held that the ALJ must apply the pre-September 20, 2000, version of listing 112.05 in this case as the Court interpreted it. The Court noted that after the ALJ had decided the case, SSA issued final rules that, among other things, revised Listings 12.05 and 112.05.² The court stated that the new version of listing 112.05 "introduced a new, dual requirement" that an individual satisfy the diagnostic description of the introductory paragraph and one of the six sets of criteria following the introductory paragraph. The Court of Appeals held that the pre-September 20, 2000, version of the Listings that had been applied by the ALJ in her decision did not require an individual to meet the diagnostic description for mental retardation, only the other criteria of the Listing. The

Court of Appeals also held that, on remand, the ALJ should apply the Court of Appeals' interpretation of the pre-September 20, 2000, version of the listings.

Statement As To How Blakes Differs From SSA's Interpretation

Our interpretation of the pre-September 20, 2000, version of Listings 12.05 and 112.05 is the same as our interpretation of the current listings. The diagnostic description of mental retardation contained in the introductory paragraph of these Listings, or "capsule definition," is an integral part of their criteria, as in all of the mental disorders listings. For example, in Acquiescence Ruling 98-2(8), acquiescing in the decision in *Sird v. Chater*, 105 F.3d 401 (8th Cir. 1997), we explained that "SSA's interpretation of the [pre-September 2000 version of] Listing [12.05] is that, if an individual has:

(1) mental retardation, i.e., significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period, or autism, i.e., a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period;

(2) a valid verbal, performance or full scale IQ in the range specified by Listing 12.05C; and

(3) a physical or other mental impairment that is severe within the meaning of 20 CFR 404.1520(c) or 416.920(c), the individual's impairments meet Listing 12.05C."³ Therefore, the revisions that became effective on September 20, 2000, were intended only to clarify sections 12.00A and 112.00A of the introductory text of the mental disorders listings and were not a change in policy. See 65 FR at 50776, 50779.

The holding is also inconsistent with our interpretation of the effective date provision of the final rules that became effective on September 20, 2000. We interpret the effective date provision of the final mental disorders rules to mean that, when a court decides a case after the effective date of the final rules, reverses the Commissioner's final decision, and remands the case for further administrative proceedings, we will apply the provisions of the final rules on remand to the entire period at issue in the claim. We do not apply the version of our rules that the adjudicator applied at the time the case originally

was adjudicated, since that decision has been vacated. Rather, as is the case with respect to other determinations and decisions, we apply our current rules to the entire period at issue.

The Court of Appeals, on the other hand, concluded that, on remand, the ALJ should apply the pre-September 20, 2000, version of the Listings (as the Court interpreted it, different from our intent), even though the ALJ will issue the hearing decision after the September 20, 2000, effective date of the final rules.

Explanation of How SSA Will Apply the Blakes Decision Within the Circuit

This Ruling applies only to cases in which the claimant resides or resided in Illinois, Indiana, Wisconsin at the time of the court remand and applies only to ALJ hearing or Appeals Council decisions made pursuant to a court's remand order.

This Ruling applies to any case involving:

(1) A final ALJ's or Appeals Council's decision, made prior to September 20, 2000, that was appealed to and remanded by the court, and; and

(2) Evidence of a medically determinable mental impairment to be evaluated under Listings 12.05 or 112.05.

In deciding cases that meet the criteria in the preceding two paragraphs, the ALJ or Appeals Council will apply the Seventh Circuit's interpretation of the pre-September 20, 2000, version of Listings 12.05 or 112.05. The ALJ or the Appeals Council will not require that the claimant meet the capsule definition of mental retardation in order to meet Listing 12.05 or 112.05. To meet a listing, the claimant need only satisfy the requirements of subsections A through D of listing 12.05 or subsections A through F of listing 112.05, as appropriate to the individual's age.

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DEPARTMENT OF STATE

[Public Notice 4564]

Culturally Significant Objects Imported for Exhibition Determinations: "The Annunciation and The Bridge at Courbevoie"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March

¹ Although *Blakes* was a title XVI childhood disability case involving the application of Listing 112.05D, similar principles also apply to disability claims involving Listing 12.05 under title II and title XVI of the Act. Therefore, this Ruling extends to both title II and title XVI disability claims involving Listings 12.05 and 112.05.

² See 65 FR 50746 (2000). The final rules were published on August 21, 2000, and they became effective on September 20, 2000. *Id.* at 50746.

³ We rescinded Acquiescence Ruling 98-2(8) when we revised the mental disorders listings in 2000. 65 FR 50784 (2000).