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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