

August 3, 2020

Claimant: [REDACTED] Thomas

SSN: [REDACTED]

DOB: [REDACTED]

AOD:

Re: Reconsideration of SSI denial

**To whom it may concern:**

[REDACTED] Thomas ([REDACTED], hereafter Ms. Thomas) by and through the undersigned counsel hereby submits this memorandum and the attached medical records in support for her claim for Supplemental Security Income (SSI) benefits under Title II of the Social Security Act. Please consider the following factual summary of Ms. Thomas’s impairments and legal analysis of how they render her disabled under the Social Security Administration regulations.

**I. Procedural History**

Ms. Thomas, who has dealt with reduced cognitive ability (which SSA terms “intellectual disorder”), since childhood, initially applied for SSI benefits in 2007 and was denied. Her current application was filed January 28, 2020. She received notice of denial on May 13, 2020. SSA denied her claim on the basis that her “conditions were not severe enough to keep [her] from working.”<sup>1</sup>

**II. Factual Background**

Ms. Thomas was enrolled in a special education during the 1977-78 school year, during which time she was four years old.<sup>2</sup> She continued speech and language therapy through her public school until at least June of 1980 at the age of 6.<sup>3</sup> Even with these accommodations, she did not earn higher than a C in any academic class in her fourth grade year<sup>4</sup>.

Ms. Thomas continued to be enrolled in special needs education programs through middle and high school, and in 1989 was struggling at [REDACTED] High School. During the 1989-90 and 1990-91 school years she earned a single grade above a C, a B- in Cosmetology, and had a 1.20

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<sup>1</sup> SSA Denial Letter 5/13/2020

<sup>2</sup> DCPS Notice of Continuing Special Education Placement

<sup>3</sup> Letter from University of the District of Columbia Speech and Hearing Clinic

<sup>4</sup> DCPS Report of Pupil Progress Elementary Grades 1A-6B

GPA<sup>5</sup>. She completed high school with a Certificate of Attainment.<sup>6</sup> In Washington, D.C., the Certificate of Attainment is awarded through the IEP program. The student may be considered eligible if “[t]he student has a significant cognitive disability within the following range ( $\leq 55-60$ )\* as documented by IQ and Adaptive Scored which impact the student’s ability to meet the requirements for earning a Standard High School Diploma.”<sup>7</sup> The certificate program is not a choice made lightly and inclusion in the program is strict. This speaks clearly to Ms. Thomas’s intellectual difficulties and, coupled with her IQ test, clearly shows that Ms. Thomas’s disabilities began well before the age of 22 and will last well beyond 12 months.

It should be noted that only holding a certificate, rather than a diploma, prevents holders from joining the military, applying for federal student aid, attending certain colleges as determined by the college, and holding certain jobs as determined by employers.<sup>8</sup>

Ms. Thomas’s limited memory prevents her from remembering the exact dates she worked. In various cases she mentioned prior employment at McDonald’s, Reagan Airport, and some personal housekeeping and janitorial work. She has also mentioned prior volunteering experiences at the Kennedy Center and at The Fellowship Bibleway Church.<sup>9</sup> The dates of these vary between accounts, but even by the most recent estimates Ms. Thomas has not worked in the last 10 years.

On November 11, 2019, Ms. Thomas underwent a comprehensive psychological evaluation conducted by Dr. [REDACTED], a licensed psychologist in Washington, D.C.<sup>10</sup> Dr. Drewno holds a Doctorate in Psychology from the American School of Professional Psychology at Argosy University and specializes in assessment and diagnosis.<sup>11</sup> Dr. Drewno diagnosed “specific learning disorder with impairment in reading” and “specific learning disorder with impairment in written expression.”<sup>12</sup>

In the course of this evaluation, Ms. Thomas was assessed to have an IQ of 64, putting her in the first percentile for this test and in the “Extremely Low” range.<sup>13</sup> Ms. Thomas was also found to have “Borderline” and “Extremely Low” scores on the other four indexes of the Wechsler Adult Intelligence Scale, Fourth Edition. Specifically, she scored in the second percentile on the Verbal Comprehension Index, the fifth percentile on the Perceptual Reasoning Index, the eighth

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<sup>5</sup> DCPS [REDACTED] High School Permanent Record

<sup>6</sup> [REDACTED] High School Certificate of Attainment

<sup>7</sup> [Is My Child on Track to Graduate?](#)

<sup>8</sup> [The Difference Between a High School Diploma and a High School Certificate](#)

<sup>9</sup> Dr. Drewno’s evaluation

<sup>10</sup> <https://app.hpla.doh.dc.gov/weblookup/Details.aspx?result=797d45d4-1932-48da-b821-7f14808b613b>

<sup>11</sup> <https://www.dullespsychological.com/AboutUs.ar.html>

<sup>12</sup> Dr. Drewno’s evaluation

<sup>13</sup> Id.

percentile on the Processing Speed Index, and the 0.1 percentile on the Working Memory Index.  
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Ms. Thomas also has been diagnosed with chronic Asthma and has been under the care of Dr. [REDACTED] since February of 2019.<sup>15</sup> Currently, she is prescribed a Flovin FHA inhaler, a Ventolin FHA inhaler, and an Albuterol Sulfate inhaler as needed to manage her condition.<sup>16</sup>

### III. Analysis

#### A. Claimant [REDACTED] Thomas has not engaged in Substantial Gainful Employment in the last 15 years

Due to the nature of Ms. Thomas's intellectual disabilities, it is difficult to ascertain the timeline of her work history and thus difficult to know what employment is relevant. According to some records, Ms. Thomas worked for McDonald's and for Reagan Airport within the last 15 years, but according to others her employment with each ended prior to 2005. Under the assumption that she was employed in these positions within the last 15 years they still do not constitute substantial gainful employment. The minimum wage during her time at McDonald's would not have meant that Ms. Thomas's part time earnings was less than Substantial Gainful activity at the time. Her work at Reagan Airport was short, less than a year. Over the course of the last 15 years, and even prior to this period of time, Ms. Thomas has never engaged in any Substantial Gainful Employment as designated by the Social Security Agency.<sup>17</sup> Currently, Ms. Thomas has no monthly income and has not had any income for the last 10 years.

#### B. Claimant [REDACTED] Thomas suffers from a combination of impairments, the severity of which inhibits her ability to work

Ms. Thomas suffers from an intellectual disorder and chronic asthma. As set forth below, the combined effects of these conditions create a severe impairment and inhibit her ability to work any job in the national economy.

##### 1. Intellectual Disorder

Ms. Thomas's intellectual disorder, diagnosed as "specific learning disorder with impairment in reading" and "specific learning disorder with impairment in written expression," severely limits her ability to do things such as understand instructions from supervisors and communicate with coworkers. It also has a significant impact on both her short and long term memory, which would pose an incredible challenge for her in the workplace.

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<sup>14</sup> Id.

<sup>15</sup> Dr. Antwi's attachment to initial application

<sup>16</sup> Id.

<sup>17</sup> [Substantial Gainful Activity](#)

Ms. Thomas struggles with tasks such as counting backwards from 20 by threes.<sup>18</sup> Dr. [REDACTED]'s report attests that when presented with three objects to memorize at the beginning of the meeting, she could only remember one of them by the end.<sup>19</sup> Ms. Thomas scored in the “intellectually disabled” range of the Coding subtest of the Wechsler Adult Intelligence Scale, which measures “freedom from distractibility.”<sup>20</sup> In addition, Dr. [REDACTED] noted Ms. Thomas’s “deficits in the communication domain.”<sup>21</sup> Ms. Thomas’s disorder affects many aspects of her functioning, but particularly those relating to her memory and communication, which would be of the utmost importance in any work environment.

## **2. Chronic Asthma**

Ms. Thomas is diagnosed with chronic asthma and has been under the care of Dr. [REDACTED] since February of 2019.<sup>22</sup> Currently, she is prescribed a Flovin FHA inhaler, a Ventolin FHA inhaler, and an Albuterol Sulfate inhaler as needed to manage her condition.

Ms. Thomas’s asthma limits the amount of physical activity she could perform as an employee, as too much could trigger an asthma attack.<sup>23</sup> In addition, many substances found in work environments have been found to irritate those with existing asthma.<sup>24</sup> For example, dyes and chemicals (such as those used in dyes, varnishes, and even those used in packing materials) all can pose a risk to someone with existing asthma; therefore the type of environment that Ms. Thomas could work in safely is very limited.<sup>25</sup>

Furthermore, given the current public health emergency, Ms. Thomas’s asthma means she is at increased risk of severe illness if she were to contract Covid-19, according to the CDC.<sup>26</sup> Working on a jobsite with other people present would put her in a substantial amount of danger that should not be overlooked.

### **C. Ms. Thomas meets or equals the listings in 20 C.F.R. § 404 for 12.5 “intellectual disorder”**

Ms. Thomas meets the criteria for SSA’s listing of “intellectual disorder” because (1) she has significantly subaverage general intellectual functioning evidenced by an IQ score of 64, (2) she has marked limitation of two areas of mental functioning (ability to understand, remember, or

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<sup>18</sup> Dr. Drewno’s evaluation, p. 3

<sup>19</sup> Id.

<sup>20</sup> Id., p. 5-6

<sup>21</sup> Id., p.6

<sup>22</sup> Dr. Antwi’s attachment to initial application

<sup>23</sup> [What Is Exercise Induced Asthma? | AAFA.org](#)

<sup>24</sup> [Occupational asthma - Symptoms and causes](#)

<sup>25</sup> Id.

<sup>26</sup> [Certain Medical Conditions and Risk for Severe COVID-19 Illness](#)

apply information and the ability to concentrate, persist, or maintain pace) and (3) her disorder began prior to age 22.

**1. Significantly subaverage general intellectual functioning evidenced by an IQ score of 64**

Ms. Thomas has an IQ of 64, which is six points below the score of 70 required by the listing in 12.5(B)(a) and puts her in the first percentile of scorers.

The test supporting this fact meets the requirements laid out in 12.00H. It was administered by Dr. [REDACTED], who is a licensed psychologist in D.C. Dr. [REDACTED]'s Ph.D. in Psychology from the American School of Professional Psychology at Argosy University evidences that she has the training and experience to administer, score, and interpret intelligence tests. This makes her a “qualified administrator” under SSA’s rules. The IQ test that was administered also meets program requirements and has a mean of 100 and a standard deviation of 15.<sup>27</sup>

**2. Marked limitation of ability to understand, remember, or apply information and ability to concentrate, persist, or maintain pace**

Ms. Thomas has a marked limitation in the ability to “understand, remember, or apply information.” Despite significant accommodations to her curriculum, Ms. Thomas still struggled in school when asked to remember the information she had learned and apply it on assessments. She achieved a 1.20 GPA in her 1989-90 and 1990-91 school years.<sup>28</sup> Her IQ test shows that this was not for lack of trying; she scored in the 0.1 percentile on the Working Memory Index.<sup>29</sup> Dr. Drewno noted that during her evaluation Ms. Thomas required repeated instruction due to her difficulties with understanding<sup>30</sup>. Not only did Ms. Thomas score in the lowest percentile in Working Memory, she also scored in the 2nd percentile for Verbal Comprehension, which is considered to be Extremely Low, and her Processing Speed is considered Borderline in the 8th percentile<sup>31</sup>. Ms. Thomas does not have the ability to process instruction and retain the information in order to apply it in an appropriate and timely manner, as would be required by any position of employment.

Ms. Thomas has a marked limitation in a second area identified by SSA, the ability to “concentrate, persist, or maintain pace,” for many of the same reasons as above. Ms. Thomas’s limited memory makes it difficult for her to work at an appropriate and consistent pace throughout the work day. Ms. Thomas has difficulty with attention and concentration due to this disability. In addition to her low score on the Working Memory Index subtest, Ms. Thomas

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<sup>27</sup> See POM DI 24583.055(c) – all tests published since 2003 meet requirement

<sup>28</sup> Permanent Record, 1989-90 and 1990-91

<sup>29</sup> Dr. Drewno’s evaluation

<sup>30</sup> Id.

<sup>31</sup> Id.

scored in the 8th percentile in the Processing Speed Index subtest and in the 2nd percentile in verbal comprehension<sup>32</sup>. These deficiencies present as difficulties with completing tasks in a timely manner due to Ms. Thomas's inability to multitask and her need for repeated instruction and oversight.<sup>33</sup> Her problems with concentration were so severe that they ultimately led her to leave her job at McDonalds.<sup>34</sup> Ms. Thomas's low working memory can lead to distraction and strong loss of focus, which is incompatible with most any job description.

### **3. Disorder began prior to age 22**

All of Ms. Thomas's school records show that she was enrolled in a special education from elementary school through high school, attesting to the fact that this disorder began prior to the age of 22.

Ms. Thomas was first placed in special education at age four.<sup>35</sup> Her public school identified her as a candidate for speech therapy in elementary school.<sup>36</sup> She continued to receive special education classes through middle and high school.<sup>37</sup> Ultimately, she completed high school with a Certificate of Attainment instead of a diploma, because her school recognized her limited capacity for the memory and attention school required, and they adjusted her curriculum accordingly.<sup>38</sup> Ms. Thomas's difficulties were identified in her early childhood, far before the age of 22, and were documented throughout her education.

#### **D. Ms. Thomas's disabilities make it impossible for her to perform her past relevant work**

Past relevant work is work performed in the last fifteen years that constituted substantial gainful activity, and that lasted long enough for Ms. Thomas to learn to do it<sup>39</sup>. Ms. Thomas's past relevant work may include work at McDonald's, in security at Reagan Airport, and cleaning and janitorial work as available. Due to the extent of Ms. Thomas's memory and recollection difficulties there are conflicting reports as to the years in which she held each of these positions.

##### **1. McDonald's**

According to her evaluation with Dr. Drewno, Ms. Thomas worked at McDonald's from 2005-2010.<sup>40</sup> Ms. Thomas reported that she left this job due to the pace of work. She felt unable

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<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Letter from DCPS, April 11, 1979

<sup>36</sup> Letter from UDC Speech and Hearing Clinic, June 17, 1980

<sup>37</sup> Report Cards

<sup>38</sup> Certificate of Attainment

<sup>39</sup> [SSA Code of Federal Regulations](#)

<sup>40</sup> Dr. Drewno's evaluation

to keep up with the expected speed and was embarrassed by her inabilities. She has difficulty multitasking and finds fast-paced work environments overwhelming. Ms. Thomas's score on the Working Memory Index subtest of the Wechsler Adult Intelligence Scale was within the 0.1 percentile<sup>41</sup>, which supports her inability to multitask efficiently or at all. Ms. Thomas has also stated that she worked at McDonald's in high school, which would have been in the late 1980s to early 1990s as Ms. Thomas graduated from Eastern High School in 1992.<sup>42</sup> Ms. Thomas's inability to correctly state when she was employed also speaks to her inattention to detail and difficulty with recollection which make any work environment, let alone a fast paced one, extremely difficult.

## **2. Security at Reagan Airport**

Ms. Thomas worked at Reagan Airport for approximately one year according to her evaluation with Dr. Drewno.<sup>43</sup> In the interview portion she stated that she worked there from 2001-2002 but in other conversations has said that she left in 2006. Again her inability to remember the dates of her employment illustrate her difficulties with recollection and focus. Furthermore, the environment at Reagan Airport was very fast paced, and Ms. Thomas had a lot of difficulty with communication while there. Ms. Thomas left her job at Reagan Airport for medical reasons after having a hysterectomy but, as stated, it is unclear when and thus unclear whether or not this would be considered past relevant work.

## **3. Cleaning or other janitorial work**

Ms. Thomas has worked intermittently in under-the-table cleaning and janitorial positions in the past but her disability prevents her from engaging full time in this business in order to support herself. Her asthma makes it difficult for her to perform any strenuous activities. Moreover, the harsh chemicals used in cleaning and janitorial work can be strong triggers for asthma attacks<sup>44</sup> which make it difficult, if not impossible, for Ms. Thomas to perform the work in a timely fashion or with any real vigor.

### **E. Ms. Thomas can not perform any job in the national economy**

#### **1. Physical**

Ms. Thomas's asthma<sup>45</sup> makes it extremely difficult for her to perform any strenuous activity without posing a great risk to her health<sup>46</sup>.

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<sup>41</sup> Id.

<sup>42</sup> Certificate of Attainment

<sup>43</sup> Dr. Drewno's evaluation

<sup>44</sup> [Occupational asthma - Symptoms and causes](#)

<sup>45</sup> Attestation by Dr. Samuel Antwi

<sup>46</sup> [What Is Exercise Induced Asthma? | AAFA.org](#)

Moreover, with regards to the international pandemic, Ms. Thomas's health would be seriously at risk in any environment where there may be exposure to Covid-19 (aka the Coronavirus). According to the CDC, those with Asthma are at increased risk for severe illness should they contract the disease<sup>47</sup>.

## **2. Sedentary**

Ms. Thomas is unable to work in a sedentary job due to her inability to focus and her short attention span. Ms. Thomas scored in the extremely low range on the Verbal Comprehension Index and Working Memory Index. Her working memory index score in particular was in the 0.1 percentile.<sup>48</sup> She has a hard time retaining information and comprehending information given to her verbally or otherwise. Furthermore, Ms. Thomas has difficulty learning new material, especially anything related to or requiring writing, and is unable to multitask without becoming overwhelmed<sup>49</sup>. Ms. Thomas does not have the capability to work in a sedentary environment because of these difficulties presented by her intellectual disability.

## **IV. Conclusion**

Claimant [REDACTED] Thomas has struggled with severely limited memory and attention from a young age. Though she is a valuable asset to her family and her community, her intellectual disability makes working full-time in most traditional work environments impractical. Her asthma further limits the environments where she could healthily work. For the aforementioned reasons, Ms. Daniels should be awarded a fully favorable decision of disabled.

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<sup>47</sup> [CDC - Certain Medical Conditions...](#)

<sup>48</sup> Dr. Drewno's evaluation

<sup>49</sup> Dr. Drewno's evaluation