

The Social Security Disability Process*

Jonathan Healy**

July 2018

“What in the world is blepharospasm, Mr. Healy?” That was a question I was asked by a Federal Administrative Law Judge (ALJ) who was about to decide the social security disability case for one of my clients. My client was unable to work on a full-time basis due to her blepharospasm condition and we were hoping the ALJ would rule in our favor that day. Everything worked out just fine for my client and she was awarded disability benefits to help replace some of her income.

I have practiced social security disability law for 17 years and have represented several thousand clients with various physical and mental conditions. Blepharospasm is a condition that is not commonly seen in many disability hearings. I would like to give a brief overview of what the Social Security Administration (SSA) is looking for to award disability benefits in general and then we can zero in on blepharospasm and how SSA looks at this condition.

SSA has a five-step process when evaluating a case for disability benefits.

1. **Substantial Gainful Activity:** Is the individual currently working and earning a certain amount each month? If an individual is working and earning over \$1180 (2018 limit) in income per month, SSA will consider them not to be disabled, regardless of any disability (20 C.F.R*. 404.1520 (b)).
2. **“Severe” Medically Determinable Impairment:** At step two, impairments are “severe” if they significantly limit a person’s ability to perform day to day work activities (20 C.F.R. 404.1520 (c)). Step two also has a durational requirement where a condition has lasted or is expected to last for more than 12 months or is expected to result in death (20 C.F.R. 404.1521).
3. **SSA Listings:** Step three is where SSA determines whether a claimant meets any of the “Listings.” The Listings are descriptions of various conditions and the impairments they cause (20 C.F.R. Part 404, Subpart P, Appendix 1).
Blepharospasm falls under Listing 2.00; however, there is not a specific Listing

for blepharospasm only. The vision Listings are 2.02 through 2.04 and deal with loss of central visual acuity, contraction of the visual fields in the better eye, and loss of visual efficiency.

4. **Past Relevant Work:** At step four, SSA determines whether an individual can do the work they used to do before the impairment interfered with full-time work. If the impairment keeps an individual from doing their past relevant work, then the process proceeds to step five. If SSA or the ALJ finds that an individual can do their past work, then the individual is not entitled to benefits (20 C.F.R. 404.1520 (f)).
5. **Any Other Work:** At the final step, if SSA or the ALJ finds there is no past relevant work, then they determine if there are other jobs in the national economy that an individual can do on a regular and full-time basis with the skills he/she has acquired in the past fifteen years (20 C.F.R. 404.1520 (g)).

The Listings for SSA get updated and/or reviewed every five to ten years.

Blepharospasm was specifically mentioned in the 2013 Code of Federal Regulations* (C.F.R.); however, the 2018 C.F.R. does not have a specific subsection for blepharospasm. This is what the 2013 C.F.R. mentioned about blepharospasm so you can have some insight into the SSA thought process. “This movement disorder is characterized by repetitive, bilateral, involuntary closure of the eyelids. If you have this disorder, you may have measurable visual acuities and visual fields that do not satisfy the criteria of 2.02 or 2.03. Blepharospasm generally responds to therapy. However, if therapy is not effective, we will consider how the involuntary closure of your eyelids affects your ability to maintain visual functioning over time” (20 C.F.R. Part 404, Subpart P, Appendix 1, 2.00 A(8)(b), 2013 edition).

One of the keys to winning a disability case for blepharospasm or any severe medically determinable impairment is to get a medical source statement from a treating physician explaining that the condition is affecting an individual’s ability to sustain a 40-hour work week. Many physicians will put blepharospasm in their treating notes and that is helpful; however, a more effective tool is a statement via a paragraph or two from a

physician stating how blepharospasm specifically affects that patients' day to day activities in the work force and around the house.

One question to think about is will the blepharospasm condition keep an individual OFF TASK for more than 15-20% of the work day? Employers pay for an employee to be productive and ON TASK. If an employee is off task for even 10-15% per day, that will affect production and an employees' ability to stay employed in many instances. If an employee can show through medical records, employer records, or a statement from a physician or supervisor that they are off task more than 15-20% of the work day, then the ALJ will often find this information compelling in his/her final analysis. At the end of the day, a social security disability case hinges on whether the disabling condition is severe enough to keep an individual from working on a regular and sustained basis.

A final thought on pursuing a social security disability claim for blepharospasm or any number of physical or mental conditions. You don't have to have an attorney represent you at a social security disability hearing; however, an attorney who specializes in disability cases is the first thing to look for if you decide to hire an attorney. Don't hire an attorney who practices 7-10 different areas of law. He/she won't be in front of ALJ's enough to keep up with the changing disability process. Most attorneys do not charge a fee unless they are able to win your case. Feel free to call the attorney you are thinking about hiring for your disability case and ask them if they have handled a blepharospasm case. If the attorney asks, "What in the world is blepharospasm?", then you may want to keep looking.

**Published in BEBRF Newsletter Vol 38, Issue 3, page1 (2018)*

***Jonathan Healy, Esq., is a partner at the law firm of Packard LaPray, Beaumont, TX and a member of the BEBRF Board of Directors.*