

Joseph LeMay v. SSA

CV-01-166-B 01/25/02

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Joseph LeMay

v.

Civil No. 01-166-B
Opinion No. 2002 DNH 026

Jo Anne B. Barnhardt,
Commissioner,
Social Security Administration

MEMORANDUM AND ORDER

This purports to be a civil action under 42 U.S.C. § 405(g) challenging a final decision of the Commissioner of the Social Security Administration denying Joseph LeMay's application for disability insurance benefits. But LeMay's counseled Motion for Reversal of the Commissioner's Decision presents no developed argument in support of the relief sought therein. Indeed, the motion does nothing more than present a chart outlining the medical evidence and follow that presentation with the following two statements: "We believe the ALJ erred by ignoring the weight of the evidence of Mr. LeMay's chronic painful condition. In the alternative with Mr. LeMay's first complaint coming at age

twenty-nine we suggest that he be compared to listing 12.07, 3[.] [sic]."

I construe counsel's first statement as setting forth an argument that the record lacks substantial evidence supporting the ALJ's decision that LeMay's chronic back pain is not disabling. The argument is meritless. The record reveals that LeMay is not taking any pain medications, has never had surgery on his back, and has refused a referral to a surgeon in Nashua because he did not want to go to Nashua. While LeMay explains his failure to take pain medications by stating that "[n]othing works," the record as a whole suggests that LeMay has not come close to exhausting his options for treating his back pain. The ALJ thus acted within his discretion in inferring that LeMay's back pain is not disabling.

Construing counsel's second statement as setting forth an argument that LeMay has a mental disorder described by mental disorder listing 12.07 (covering somatoform disorders), I reject the argument because LeMay failed to present this claim to the Commissioner, and, in any event, there is no record evidence that LeMay suffers from such a disorder.

The Commissioner's Motion for Order Affirming the Decision of the Commissioner (Doc. No. 7) is granted and LeMay's Motion for Reversal of the Commissioner's Decision (Doc. No. 5) is denied.

The Clerk shall enter judgment accordingly.

SO ORDERED.

Paul Barbadoro
Chief Judge

January 25, 2002

cc: Robert E. Raiche, Sr., Esq.
David L. Broderick, Esq.