

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-2114

ROBERT EMERSON LAMB,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE, Commissioner, Social Security
Administration,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Newport News. Rebecca Beach Smith,
District Judge. (4:07-cv-00082-RBS)

Submitted: March 26, 2008

Decided: April 9, 2008

Before NIEMEYER and DUNCAN, Circuit Judges, and WILKINS, Senior
Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Robert Emerson Lamb, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Emerson Lamb applied to proceed in forma pauperis. After Lamb filed the Application to Proceed Without Prepayment of Fees and Affidavit and answered each question asked, the district court denied in forma pauperis status, stating that Lamb had sufficient income to pay a filing fee. Lamb was last employed in January 2007, and now receives disability benefits that, at their maximum, total \$637 per month. Lamb asserted living expenses of \$395 per month, but did not include in his expenses an accounting for medical care, clothing, gas, or other ordinary expenses beyond rent, food, and phone service. On this basis, we conclude Lamb is not able to pay the \$350 filing fee. Thus, the district court abused its discretion. Accordingly, we grant in forma pauperis status on appeal, vacate the order of the district court, and remand with directions to allow Lamb to proceed in forma pauperis in the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED