

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>KIMBERLY D. WILLIAMS,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 17-00346-KD-N</b>
	)	
<b>NANCY A. BERRYHILL, <i>Acting</i></b>	)	
<b><i>Commissioner of Social Security,</i></b>	)	
<b>Defendant.</b>	)	

**ORDER**

This action is before the Court on the motion for leave to proceed without prepayment of fees and costs, or *in forma pauperis* (“IFP”), under 28 U.S.C. § 1915 (Doc. 2) filed by Plaintiff KIMBERLY D. WILLIAMS (“the Plaintiff”). The motion has been referred to the undersigned Magistrate Judge for appropriate action in accordance with 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, and S.D. Ala. GenLR 72(a). See S.D. Ala. GenLR 72(b); (8/1/2017 electronic reference).

Authority for granting a plaintiff permission to proceed without prepayment of fees and costs is found at 28 U.S.C. § 1915, which provides as follows:

[Generally], any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.

28 U.S.C. § 1915(a)(1); see *Troville v. Venz*, 303 F.3d 1256, 1260 (11th Cir. 2002) (affirming the application of § 1915’s provisions to a non-prisoner’s complaint).

“The *in forma pauperis* statute, 28 U.S.C. § 1915, ensures that indigent persons will have equal access to the judicial system.” *Attwood v. Singletary*, 105 F.3d 610, 612-613 (11th Cir. 1997) (citing *Coppedge v. United States*, 369 U.S. 438, 446 (1962)). However, “[t]here is no question that proceeding *in forma pauperis* is a privilege, not a right,” *Camp v. Oliver*, 798 F.2d 434, 437 (11th Cir. 1986),<sup>1</sup> and “should not be a broad highway into the federal courts.” *Phillips v. Mashburn*, 746 F.2d 782, 785 (11th Cir. 1984) (per curiam). Nevertheless, “while a trial court has broad discretion in denying an application to proceed *in forma pauperis* under 28 U.S.C.A. § 1915, it must not act arbitrarily and it may not deny the application on erroneous grounds.” *Pace v. Evans*, 709 F.2d 1428, 1429 (11th Cir. 1983) (per curiam) (citing *Flowers v. Turbine Support Div.*, 507 F.2d 1242, 1244 (5th Cir. 1975)); see also *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306-07 (11th Cir. 2004) (per curiam) (“[A] trial court has wide discretion in denying an application to proceed IFP under 28 U.S.C. § 1915...However, in denying such applications a court must not act arbitrarily. Nor may it deny the application on erroneous grounds.” (quotation omitted)).

When considering a motion filed pursuant to § 1915(a), “[t]he only determination to be made by the court ... is whether the statements in the affidavit satisfy the requirement of poverty.” *Watson v. Ault*, 525 F.2d 886, 891 ([5]th Cir. 1976). An affidavit addressing the statutory language

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<sup>1</sup> *Accord Rivera v. Allin*, 144 F.3d 719, 722, 724 (11th Cir. 1998) (“Leave to proceed IFP is, and always has been, the exception rather than the rule. To commence a civil lawsuit in federal district court, the general rule is that initiating parties must prepay a filing fee ... To be sure, proceeding IFP in a civil case is a privilege, not a right—fundamental or otherwise.”), *abrogated on other grounds, Jones v. Bock*, 549 U.S. 199 (2007).

should be accepted by the court, absent a serious misrepresentation, and need not show that the litigant is “absolutely destitute” to qualify for indigent status under § 1915. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 338–40, 69 S. Ct. 85, 88–89, 93 L. Ed. 43 (1948). Such an affidavit will be held sufficient if it represents that the litigant, because of his poverty, is unable to pay for the court fees and costs, and to support and provide necessities for himself and his dependents. *Id.* at 339, 69 S. Ct. at 89. In other words, the statute is not to be construed such that potential litigants are forced to become public charges or abandon their claims because of the filing fee requirements. *Id.* at 339–40, 69 S. Ct. at 89...The district court must provide a sufficient explanation for its determination on IFP status to allow for meaningful appellate review. *O’Neal v. United States*, 411 F.2d 131, 138 (5th Cir. 1969); *Phipps v. King*, 866 F.2d 824, 825 (6th Cir. 1988); *Besecker v. State of Ill.*, 14 F.3d 309, 310 (7th Cir. 1994) (per curiam).

*Martinez*, 364 F.3d at 1307 (footnotes omitted).

“A court may not deny an IFP motion without first comparing the applicant's assets and liabilities in order to determine whether he has satisfied the poverty requirement.” *Thomas v. Chattahoochee Judicial Circuit*, 574 F. App'x 916, 917 (11th Cir. 2014) (per curiam) (unpublished)<sup>2</sup> (citing *Martinez*, 364 F.3d at 1307-08).

“The question under 28 U.S.C. § 1915 is whether the litigant is ‘unable to pay’ the costs, and the answer has consistently depended in part on [the] litigant’s actual ability to get funds from a spouse, a parent, an adult sibling, or other next friend.”

*Williams v. Spencer*, 455 F. Supp. 205, 209 (D. Md. 1978); see *Fridman v. City of New York*, 195 F. Supp. 2d 534, 537 (S.D.N.Y. 2002) (“In assessing an application to proceed *in forma pauperis*, a court may consider the resources that the applicant has

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<sup>2</sup> In this Circuit, “[u]npublished opinions are not considered binding precedent, but they may be cited as persuasive authority.” 11th Cir. R. 36-2 (effective Dec. 1, 2014). See also *Bonilla v. Baker Concrete Const., Inc.*, 487 F.3d 1340, 1345 n.7 (11th Cir. 2007) (“Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants.”).

or ‘can get’ from those who ordinarily provide the applicant with the ‘necessities of life,’ such as ‘from a spouse, parent, adult sibling or other next friend.’ . . . If it appears that an applicant’s ‘access to [ ] court has not been blocked by his financial condition; rather [that] he is “merely in the position of having to weigh the financial constraints imposed if he pursues [his position] against the merits of his case,” then a court properly exercises its discretion to deny the application.”); *Sellers v. United States*, 881 F.2d 1061, 1063 (11th Cir. 1989) (per curiam) (funds “derived from family sources” are relevant to IFP determination); *Wilson v. Sargent*, 313 F.3d 1315, 1319-20 (11th Cir. 2002) (per curiam) (same).<sup>3</sup> “Federal Courts have frequently

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<sup>3</sup> Most cases considering the ability of someone else to pay these costs for a putative pauper focus on whether those costs can be borne by a close family member—such as a spouse, parent, an adult sibling, or other next friend. *E.g.*, *Williams*, 455 F. Supp. at 209; *see also Pisano v. Astrue*, Civil Action No. 11–30269–KPN, 2012 WL 79188, at \*2 (D. Mass. Jan. 10, 2012) (“A number of courts have come to the same conclusion that the income and resources of a spouse, if not other close family members as well, are relevant to the determination of indigency under 28 U.S.C. § 1915.”) (collecting cases); *but see Fridman*, 195 F. Supp. 2d at 537 (“In assessing an application to proceed *in forma pauperis*, a court may consider the resources that the applicant has or ‘can get’ from **those who ordinarily provide the applicant with the ‘necessities of life,’** such as ‘from a spouse, parent, adult sibling or other next friend.’” (emphasis added)), *Ginters v. Frazier*, Civ. No. 07-4681 (JMR/RLE), 2008 WL 314701, at \*2 n.1 (D. Minn. Feb. 4, 2008) (“Federal Courts have frequently recognized that, for purposes of determining IFP eligibility, it is appropriate to consider any support that an IFP applicant might receive from a spouse, or from **any other individual.**” (emphasis added)), and *Akkaraju v. Ashcroft*, No. 03 C 6447, 2003 WL 22232969, at \*1 (N.D. Ill. Sept. 26, 2003) (“In evaluating the funds available to *in forma pauperis* movants, courts may consider the income or resources of **interested persons**, such as spouses and parents.” (citation omitted and emphasis added)).

The undersigned requires this inquiry when it appears likely that a plaintiff’s primary means of support is through such an individual.

recognized that, for purposes of determining IFP eligibility, it is appropriate to consider any support that an IFP applicant might receive from a spouse, or from ***any other individual.***” *Ginters v. Frazier*, Civ. No. 07-4681 (JMR/RLE), 2008 WL 314701, at \*2 n.1 (D. Minn. Feb. 4, 2008) (emphasis added); accord *Fridman*, 195 F. Supp. 2d at 537; *Williams*, 455 F. Supp. at 208-09; *Akkaraju v. Ashcroft*, No. 03 C 6447, 2003 WL 22232969, at \*1 (N.D. Ill. Sept. 26, 2003) (“In evaluating the funds available to *in forma pauperis* movants, courts may consider the income or resources of interested persons, such as spouses and parents.” (citation omitted)).

Per the representations in the Plaintiff’s IFP motion (Doc. 2), which is executed in substantial compliance with 28 U.S.C. § 1746 and thus constitutes an unsworn declaration made under penalty of perjury, she is married and has no dependents. She has been unemployed since 2013, and her spouse is also unemployed. Neither she nor her spouse receives welfare aid, but she receives \$36.00 a month in food stamps. Her spouse receives \$1,608 a month in Social Security benefits. Her spouse owns a house with an estimated value of \$50,000 and a current mortgage of \$58,000. She has two automobiles registered in her name: a 2007 model compact hatchback, which is fully paid for and has an estimated value of \$2,646; and a 1999 model truck with an estimated value of \$1,936 but for which she owes \$3,7000. She reports no other major assets. She reports \$0 total cash in banks, savings, etc., and reports \$0 in monies received or held for her during the last twelve months. She reports almost \$2,000 in various financial debts and obligations. Her reported monthly expenses are \$500 for the house mortgage, \$40

on the various reported debts, and \$66 for medical insurance.

Upon consideration, the undersigned finds that the information in the Plaintiff's present motion (Doc. 2) is insufficient to make an informed IFP determination. More specifically, the Plaintiff reports only \$606 in monthly expenses, which leaves \$1,002 a month from her spouse's Social Security benefits, along with the \$36 per month in food stamps she receives. However, it appears possible that the Plaintiff may not have reported all of her monthly expenses (e.g., food, utilities, car payment).

Accordingly, no later than **Wednesday, August 23, 2017**, the Plaintiff must either 1) pay the full \$400 filing fee, or 2) file an amended IFP motion or sworn supplement to the present IFP motion providing any additional information the Plaintiff feels is necessary to address the above-stated concerns and to otherwise demonstrate entitlement to proceed without prepayment of the filing fee. The failure to comply with this directive, or the failure to file an amended IFP motion or supplement that sufficiently satisfies the requirement of poverty, will result in entry of a recommendation to the Court that the Plaintiff be denied leave to proceed IFP in this action, and that this action be dismissed without prejudice for failure to prosecute and obey the Court's orders unless the Plaintiff pays the filing fee within the time period for objections to the recommendation. *See Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1337 (11th Cir. 2005) (holding that a district court may dismiss an action for failure to prosecute and obey a court order under both Federal Rule of Civil Procedure 41(b) and the court's inherent power to manage its

docket); *Woods v. Dahlberg*, 894 F.2d 187, 187 (6th Cir. 1990) (per curiam) (denial of IFP motion is “the functional equivalent of an involuntary dismissal”).

**DONE** and **ORDERED** this the 2<sup>nd</sup> day of August 2017.

*/s/ Katherine P. Nelson*  
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**KATHERINE P. NELSON**  
**UNITED STATES MAGISTRATE JUDGE**