

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELIZABETH SALMERON,

Plaintiff,

v.

ANDREW SAUL, Commissioner of
Social Security,

Defendant.

Case No. 1:21-cv-00413-BAM

**ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN DISTRICT
JUDGE**

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF’S
APPLICATION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS BE DENIED**

(Docs. 2, 4)

FOURTEEN (14) DAY DEADLINE

Plaintiff Elizabeth Salmeron (“Plaintiff”), proceeding with counsel, seeks review of a decision of the Commissioner of Social Security. Plaintiff initiated this action on March 15, 2021. (Doc. 1). On the same day, Plaintiff filed an application to proceed *in forma pauperis* under 28 U.S.C. § 1915. (Doc. 2). Finding Plaintiff’s application insufficient to determine her entitlement to proceed without prepayment of fees, the Court directed Plaintiff to complete and file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form). (Doc. 3). Plaintiff submitted a Long Form application on April 2, 2021. (Doc. 4).

///

1 Plaintiff's Long Form application reveals that she does not receive monthly income, but
2 her spouse receives \$3,500 monthly, which amounts to an annual income of \$42,000. (Doc. 4 at
3 2.) Plaintiff has two cars worth \$13,000 and \$4,000 respectively. (*Id.* at 3.) Plaintiff's spouse
4 pays for monthly expenses and Plaintiff has only one dependent. (*Id.* at 3-4.) Monthly expenses
5 are estimated as \$3,715, and includes amounts for recreation (\$50), clothing (\$150), and laundry
6 (\$50). (*Id.* at 4-5.) The estimated amount for monthly expenses is inconsistent with Plaintiff's
7 prior application, which identified only \$2,115 in monthly expenses, not including food. (Doc. 2-
8 2 at 1.)

9 "To satisfy the requirements of 28 U.S.C. § 1915, applicants must demonstrate that
10 because of poverty, they cannot meet court costs and still provide themselves, and any
11 dependents, with the necessities of life." *Soldani v. Comm'r of Soc. Sec.*, 2019 WL 2160380, at
12 *1 (E.D. Cal. Jan. 31, 2019). Many courts look to the federal poverty guidelines set by the United
13 States Department of Health and Human Services ("HHS") as a guidepost in evaluating in forma
14 pauperis applications. *See Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 n.5 (11th Cir.
15 2004); *Boulas v. United States Postal Serv.*, No. 1:18-cv-01163-LJO-BAM, 2018 WL 6615075,
16 at *1 (E.D. Cal. Nov. 1, 2018) (applying federal poverty guidelines to in forma pauperis
17 application). For a family or household of three, the 2021 poverty guideline is \$21,960. *See U.S.*
18 *Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal*
19 *Programs*, available at <https://aspe.hhs.gov/poverty-guidelines> (last visited May 11, 2021).

20 Having considered Plaintiff's Long Form application, the Court finds that she has not
21 made the showing required by section 1915 that she is unable to pay the required fees for this
22 action. Although Plaintiff has no income or savings of her own to pay the filing fee, she has
23 attested to her spouse's income and assets, and despite having no income has reported making
24 payments on her medical bills. (Doc. 4 at 5.) The Court may consider Plaintiff's spouse's
25 financial resources in determining whether she is entitled to IFP status. *See Escobedo v.*
26 *Applebees*, 787 F.3d 1226, 1236 (9th Cir. 2015). Considering her spouse's income and assets,
27 Plaintiff's household estimated annual income is nearly double the federal poverty guidelines. In
28 light of this and inconsistencies concerning Plaintiff's monthly expenses, there is no indication

1 that Plaintiff is unable to pay the filing fee while also providing for necessities of life.

2 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a District Judge
3 to this action.

4 Furthermore, it is HEREBY RECOMMENDED that:

5 1. Plaintiff's applications to proceed without prepayment of fees and costs (Docs. 2,
6 4) be DENIED; and

7 2. Plaintiff be required to pay the \$402.00 filing fee in full to proceed with this
8 action.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
11 **(14) days** after being served with these findings and recommendations, Plaintiff may file written
12 objections with the Court. Such a document should be captioned "Objections to Magistrate
13 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within
14 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d
15 834, 838-39 (9th Cir. 2014) (*citing Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

16
17 IT IS SO ORDERED.

18 Dated: May 11, 2021

18 /s/ Barbara A. McAuliffe
19 UNITED STATES MAGISTRATE JUDGE