

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SHAWN HODGES,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:21-cv-01122-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENYING
PLAINTIFF’S APPLICATION TO
PROCEED *IN FORMA PAUPERIS* AND
REQUIRING PLAINTIFF TO PAY THE
FILING FEE AND DIRECTING CLERK OF
THE COURT TO RANDOMLY ASSIGN A
DISTRICT JUDGE

(ECF No. 4)

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Plaintiff Shawn Hodges filed a complaint on July 23, 2021, challenging a final decision of the Commissioner of Social Security denying his application for disability benefits. Plaintiff did not pay the filing fee in this action and instead filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.) On July 28, 2021, an order issued finding that Plaintiff’s application to proceed *in forma pauperis* did not demonstrate entitlement to proceed in this action without prepayment of fees. (ECF No. 3.) Plaintiff was ordered to either file a long form application to proceed without prepayment of fees or pay the filing fee. (*Id.*) On August 4, 2021, Plaintiff filed a long form application. (ECF No. 5.)

In order to proceed in court without prepayment of the filing fee, a plaintiff must submit an affidavit demonstrating that he “is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). The right to proceed without prepayment of fees in a civil case is a privilege and not a right. Rowland v. California Men’s Colony, Unit II Men’s Advisory Council, 506 U.S. 194, 198 n.2 (1993); Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984)

1 (“permission to proceed *in forma pauperis* is itself a matter of privilege and not right; denial of
2 *in forma pauperis* status does not violate the applicant’s right to due process”). A plaintiff need
3 not be absolutely destitute to proceed *in forma pauperis* and the application is sufficient if it
4 states that due to his poverty he is unable to pay the costs and still be able to provide himself and
5 his dependents with the necessities of life. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S.
6 331, 339 (1948). Whether to grant or deny an application to proceed without prepayment of fees
7 is an exercise of the district court’s discretion. Escobedo v. Applebees, 787 F.3d 1226, 1236 (9th
8 Cir. 2015).

9 In assessing whether a certain income level meets the poverty threshold under Section
10 1915(a)(1), courts look to the federal poverty guidelines developed each year by the Department
11 of Health and Human Services. See, e.g., Paco v. Myers, No. CIV. 13-00701 ACK, 2013 WL
12 6843057 (D. Haw. Dec. 26, 2013); Lint v. City of Boise, No. CV09-72-S-EJL, 2009 WL
13 1149442, at *2 (D. Idaho Apr. 28, 2009) (and cases cited therein).

14 Plaintiff claims his spouse receives \$3,000 per month in employment income, and
15 receives \$2,000 per month from his father-in-law as a gift to assist with the mortgage. (ECF No.
16 4 at 1-2.) Thus Plaintiff claims \$5,000 per month, or \$60,000 per year in income in this portion.
17 However, the Court notes that in specifically listing the spouse’s employment in another section,
18 Plaintiff proffers the spouse earns \$6,000 per month, which would equate to \$72,000 per year
19 just in employment income. (Id. at 2.) Plaintiff claims two seventeen year old children, and one
20 twenty-two year child as dependents. (Id. at 3.) Plaintiff claims monthly expenses in the amount
21 of \$4,800, including \$700 in utilities, \$250 in home maintenance, and car and car insurance
22 payments totaling \$800 per month.

23 The 2021 Poverty Guidelines for the 48 contiguous states for a household of five is
24 \$31,040.00. 2021 Poverty Guidelines, <https://aspe.hhs.gov/poverty-guidelines> (last visited
25 August 6, 2021). Based on the income reported in Plaintiff’s application to proceed *in forma*
26 *pauperis*, of \$5,000.00 per month, Plaintiff’s household income is at least \$60,000 per year, and
27 perhaps significantly above that given the discrepancy in the listed employment income of the
28 spouse. Even based on the \$60,000 per year, the income is well beyond the poverty level. In

1 consideration of the income and expenses listed, Plaintiff demonstrates he can pay the costs and
2 still be able to provide himself and his dependents with the necessities of life. If Plaintiff
3 submits objections to this findings and recommendations, he is expected to address the
4 discrepancy regarding the spouse's listed income, and further address the various expenses listed
5 in the application, which appear excessive in relation to a claim of entitlement to proceed *in*
6 *forma pauperis*.

7 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's application to proceed
8 *in forma pauperis* be DENIED and Plaintiff be ordered to pay the \$402.00 filing fee for this
9 action.

10 The Clerk of the Court is DIRECTED to randomly assign this matter to a district judge.

11 This findings and recommendations is submitted to the district judge assigned to this
12 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within **fourteen**
13 **(14) days** of service of this recommendation, Plaintiff may file written objections to this findings
14 and recommendations with the court. Such a document should be captioned "Objections to
15 Magistrate Judge's Findings and Recommendations." The district judge will review the
16 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The
17 parties are advised that failure to file objections within the specified time may result in the
18 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
19 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

20 IT IS SO ORDERED.

21 Dated: August 6, 2021

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24 UNITED STATES MAGISTRATE JUDGE
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