

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

AIDA HERMOSILLO OBO MINOR V.M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:23-cv-01467-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DENYING  
PLAINTIFF’S APPLICATION TO  
PROCEED *IN FORMA PAUPERIS* AND  
REQUIRING PLAINTIFF TO PAY THE  
FILING FEE

ORDER DIRECTING CLERK OF THE  
COURT TO RANDOMLY ASSIGN A  
DISTRICT JUDGE

(ECF No. 9)

**OBJECTIONS DUE WITHIN FOURTEEN  
DAYS**

Plaintiff Aida Hermosillo, on behalf of minor, V.M. (“Plaintiff”),<sup>1</sup> filed a complaint on October 12, 2023, challenging a final decision of the Commissioner of Social Security denying an application for disability benefits. (ECF No. 1.) 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.) Based on the initial application, the Court found it could not determine from the information provided if Plaintiff is entitled to proceed in this action without prepayment of fees. On October 16, 2023, the Court denied the application without prejudice and ordered

---

<sup>1</sup> For purposes of the application to proceed *in forma pauperis*, the Court refers to the primary applicant Aida Hermosillo as Plaintiff.

1 Plaintiff to file a long form application. (ECF No. 4.) On November 3, 2023, Plaintiff filed a  
2 long form application. (ECF No. 5.) Finding Plaintiff failed to provide the Court with complete  
3 and accurate information regarding her household income and expenses, the Court ordered  
4 Plaintiff to file a revised long form application on November 6, 2023. (ECF No. 6.) On  
5 November 22, 2023, Plaintiff filed a revised long form application. (ECF No. 9.) For the  
6 reasons discussed herein, the Court shall recommend Plaintiff’s application to proceed IFP be  
7 denied.

8 In order to proceed in court without prepayment of the filing fee, a plaintiff must submit  
9 an affidavit demonstrating they are “unable to pay such fees or give security therefor.” 28  
10 U.S.C. § 1915(a)(1). The right to proceed without prepayment of fees in a civil case is a  
11 privilege and not a right. Rowland v. California Men’s Colony, Unit II Men’s Advisory Council,  
12 506 U.S. 194, 198 n.2 (1993); Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984)  
13 (“permission to proceed *in forma pauperis* is itself a matter of privilege and not right; denial of  
14 *in forma pauperis* status does not violate the applicant’s right to due process”). A plaintiff need  
15 not be absolutely destitute to proceed *in forma pauperis* and the application is sufficient if it  
16 states that due to his poverty he is unable to pay the costs and still be able to provide himself and  
17 his dependents with the necessities of life. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S.  
18 331, 339 (1948). In assessing whether a certain income level meets the poverty threshold under  
19 Section 1915(a)(1), courts look to the federal poverty guidelines developed each year by the  
20 Department of Health and Human Services. See, e.g., Boulas v. U.S. Postal Serv., No. 1:18-cv-  
21 01163-LJO-BAM, 2018 WL 6615075, at \*1 n.1 (E.D. Cal. Nov. 1, 2018) (applying federal  
22 poverty guidelines to deny IFP application); Paco v. Myers, No. CIV. 13-00701 ACK, 2013 WL  
23 6843057 (D. Haw. Dec. 26, 2013); Lint v. City of Boise, No. CV09-72-S-EJL, 2009 WL  
24 1149442, at \*2 (D. Idaho Apr. 28, 2009) (and cases cited therein). Whether to grant or deny an  
25 application to proceed without prepayment of fees is an exercise of the district court’s discretion.  
26 Escobedo v. Applebees, 787 F.3d 1226, 1236 (9th Cir. 2015).

27 In her revised long form application, Plaintiff first proffers that the average monthly  
28 income of her household over the past twelve months totals \$4,762.00 from the following

1 sources: (1) \$2,906.00 from her employment; (2) \$768.00 from child support; and (3) her  
2 spouse's \$1,088.00 in disability. (ECF No. 9 at 1-2.) Plaintiff proffers she does not expect  
3 changes to her household monthly income over the next 12 months. (Id. at 5.)

4 Plaintiff's household includes her spouse and one dependent. (Id. at 3.) Plaintiff claims  
5 expenses in the amount of: (1) \$937 for home-mortgage payment; (2) \$600 for utilities; (3) \$900  
6 for food; (4) \$200 for clothing; (5) \$500 for transportation; (6) \$200 for recreation; (7) \$50 for  
7 homeowner's insurance; (8) \$300 for auto insurance; (9) \$120 in property taxes; (10) \$500 car  
8 payment; and (11) \$200 for a credit card. (Id. at 4.) This totals \$4,507 per month in claimed  
9 expenses.

10 Plaintiff also claims the following assets: (1) a home proffered to be valued at \$260,000;  
11 (2) a 2021 Nissan Frontier proffered to be valued at \$28,000; and (2) a 2015 Chrysler 300  
12 proffered to be valued at \$7,000. (Id. at 3.) Plaintiff claims to currently have \$50.00 cash and  
13 \$250.00 in a "savings/checking" account. (Id. at 2.)

14 The Court finds the information contained in Plaintiff's revised application is inconsistent  
15 with a finding of poverty based on such income, stated expenses, and stated assets. Plaintiff's  
16 annual household income is \$57,144.00, which exceeds the poverty guideline for a three-person  
17 household (\$24,860). 2023 Poverty Guidelines, [https://aspe.hhs.gov/topics/poverty-economic-](https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines)  
18 [mobility/poverty-guidelines](https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines) (last visited November 27, 2023). Further, while recognizing  
19 Plaintiff makes monthly payments on her car and mortgage, Plaintiff's claimed savings, cash,  
20 and assets exceed \$295,000. Plaintiff's income and assets therefore reflect that Plaintiff can pay  
21 the \$402.00 filing fee for this action.

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

25 These findings and recommendations are submitted to the District Judge to be assigned to  
26 this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within  
27 **fourteen (14) days** of service of this recommendation, Plaintiff may file written objections to  
28 this findings and recommendations with the court. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” The District Judge will  
2 review the Magistrate Judge’s findings and recommendations pursuant to 28 U.S.C. §  
3 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may  
4 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)  
5 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6 IT IS FURTHER ORDERED that the Clerk of the Court is DIRECTED to randomly  
7 assign this matter to a District Judge.

8  
9 IT IS SO ORDERED.

10 Dated: November 27, 2023

  
\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28