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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATTIE A. COXEY,

Plaintiff,

No. CIV S-09-2530 EFB

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

ORDER AND
FINDINGS AND RECOMMENDATIONS

Defendant.

_____/

On September 10, 2009, plaintiff filed a social security complaint and an application to proceed in this action *in forma pauperis* pursuant to 28 U.S.C. § 1915. Dckt. Nos. 1, 2. Because plaintiff's application and affidavit in support thereof did not provide complete information regarding plaintiff's ability to pay or give security for court costs, the undersigned ordered plaintiff to file, on or before September 28, 2009, a further affidavit containing information regarding her husband's income and whether she is supported by that income, and an accounting of her monthly expenses. Dckt. No. 3. The September 14, 2009 order stated that once the further affidavit was submitted, the court would resume consideration of plaintiff's application to proceed *in forma pauperis*. *Id.* However, the court file reveals that no further affidavit was submitted.

1 Pursuant to federal statute, a filing fee of \$350.00 is required to commence a civil action
2 in federal district court. 28 U.S.C. § 1914(a). The court may nonetheless authorize
3 commencement of an action “without prepayment of fees and costs or security therefor, by a
4 person who makes affidavit that he is unable to pay such costs or give security therefor.” 28
5 U.S.C. § 1915(a)(1). An *in forma pauperis* applicant need not be absolutely destitute to qualify
6 for the waiver, but must demonstrate that because of his poverty, he cannot meet court costs and
7 still provide himself and his dependents with the necessities of life. *Adkins v. E.I. DuPont de*
8 *Nemours & Co.*, 335 U.S. 331, 339 (1948). The determination whether a plaintiff is indigent,
9 and thus unable to pay the filing fee, falls within the district court’s reasonable discretion.
10 *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). “[P]ermission to proceed in forma
11 pauperis is itself a matter of privilege and not right; denial of in forma pauperis status does not
12 violate the applicant’s right to due process.” *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir.
13 1984) (citation omitted). “[T]he same even-handed care must be employed to assure that federal
14 funds are not squandered to underwrite, at public expense . . . the remonstrances of a suitor who
15 is financially able, in whole or in material part, to pull his own oar.” *Temple v. Ellerthorpe*, 586
16 F. Supp. 848, 850 (D.R.I. 1984) (citation omitted).

17 As noted in the September 14, 2009 order, plaintiff’s application for *in forma pauperis*
18 status states that she owns a certificate of deposit (“CD”) worth \$15,500 (with a maturity date of
19 December 2010) and a 2007 Ford Edge AWD, and that her “husband drives to work.” Because
20 the affidavit did not provide any information about plaintiff’s monthly expenses or about her
21 husband’s income, the court gave plaintiff an opportunity to file a further affidavit so that it
22 could evaluate whether plaintiff can pay or give security for court costs and still be able to
23 provide herself with the necessities of life. *See Adkins*, 335 U.S. at 339; *see also Monti v.*
24 *McKeon*, 600 F. Supp. 112, 114 (D. Conn. 1984) (“in ruling on motions to proceed *in forma*
25 *pauperis*, . . . courts have considered the income of interested persons, such as spouses and
26 parents, in evaluating the funds available to the movant. . . . If the plaintiff is supported by her

1 spouse, and her spouse is financially able to pay the costs of this appeal, it follows that the
2 plaintiff's own lack of funds will not prevent her from gaining access to the courts.").

3 Without any further information from plaintiff, in light of plaintiff's \$15,500 CD and
4 2007 Ford Edge AWD and the fact that plaintiff's spouse is currently employed, this court
5 cannot conclude that plaintiff cannot pay the \$350.00 filing fee and initial service costs and still
6 provide herself and her dependents with the necessities of life. Accordingly, the court will
7 recommend denial of plaintiff's application to proceed *in forma pauperis*. The court notes,
8 however, that this recommendation is limited to payment of the filing fee and the initial service
9 costs. Because the benefits accorded to a plaintiff who has been granted *in forma pauperis* status
10 may extend beyond payment of the filing fee (e.g., such benefits may include the costs of
11 preparing a transcript and printing the record on appeal, *see* 28 U.S.C. § 1915(c)), if these
12 findings and recommendations are adopted and if plaintiff's circumstances change, plaintiff may
13 pursue such benefits in a subsequent application. "If a pay-as-you-go plaintiff is, down the road,
14 confronted with necessary expenses of litigation which overshoot his then-available means, he
15 can at that time, by proper petition, seek refuge under § 1915." *Temple*, 586 F. Supp. at 852, n. 7
16 (citation omitted); *but cf.*, *Wiideman v. Harper*, 754 F. Supp. 808, 809 (D. Nev. 1990)
17 (conversely, a court does not remain bound to by its initial grant of *in forma pauperis* status if
18 the plaintiff's financial situation improves).

19 Accordingly, the Clerk is directed to randomly assign a United States District Judge to
20 this case. Further, IT IS HEREBY RECOMMENDED that plaintiff's application to proceed *in*
21 *forma pauperis* be DENIED, and plaintiff be given thirty days within which to pay the filing fee
22 of \$350.00.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days after
25 being served with these findings and recommendations, any party may file written objections
26 with the court and serve a copy on all parties. Such a document should be captioned "Objections

1 to Magistrate Judge's Findings and Recommendations." Failure to file objections within the
2 specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158
3 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

4 SO ORDERED.

5 DATED: October 19, 2009.


6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE
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