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

BAILEY J. NELSON,

Plaintiff,

CIV S-11-2520 GGH

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

ORDER

Defendant.

_____ /

Plaintiff has requested authority under 28 U.S.C. § 1915 to proceed in forma pauperis. Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The complaint as filed is insufficient, however. Although plaintiff requests that the Social Security Administration reexamine its decision, plaintiff does not allege that he received a final decision from the SSA, which is a jurisdictional requirement. Federal courts may only review final decisions of the Commissioner. 42 U.S.C. § 405(g). For example, an Appeals Council denial of review of the ALJ's decision is a final decision. Ramirez v. Shalala, 8 F.3d 1449, 1451 (9th Cir. 1993). Plaintiff will be given leave to file an amended complaint. The amended complaint shall state whether plaintiff received a final decision, and if so, the date of

1 that decision by the Appeals Council.

2 Plaintiff is informed that the court cannot refer to a prior pleading in order to
3 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
4 complaint be complete in itself without reference to any prior pleading. This is because, as a
5 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
6 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
7 longer serves any function in the case.

8 In accordance with the above, IT IS HEREBY ORDERED that:

9 1. Plaintiff's request to proceed in forma pauperis is granted.

10 2. Plaintiff's complaint is dismissed for the reasons discussed above, with leave
11 to file an amended complaint within twenty-eight (28) days from the date of service of this Order.
12 Failure to file an amended complaint will result in a recommendation that this action be
13 dismissed.

14 Dated: October 3, 2011

15 /s/ Gregory G. Hollows
16 UNITED STATES MAGISTRATE JUDGE

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