

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00990-BNB

VICTOR MARTÍNEZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

---

ORDER OF DISMISSAL

---

Plaintiff, Victor Martínez, initiated this action by filing *pro se* a complaint (ECF No. 1) and a motion and affidavit for leave to proceed pursuant to 28 U.S.C. § 1915 (ECF No. 2).

On April 17, 2012, the Court denied the § 1915 motion and affidavit because Mr. Martínez alleged in the motion and affidavit that he and his wife had monthly income that exceeded their monthly expenses by \$1,337.00. As a result, the Court found that Mr. Martínez had sufficient income and assets to pay the \$350.00 filing fee and did not qualify to proceed *in forma pauperis* pursuant to § 1915. The Court directed Mr. Martínez to pay the \$350.00 filing fee within thirty days if he wished to pursue his claims in this action. The April 17 order warned Mr. Martínez that the complaint and the action would be dismissed without prejudice and without further notice if he failed to pay the full \$350.00 filing fee within the time allowed.

Mr. Martínez has failed, within the time allowed, to pay the \$350.00 filing fee as

directed or otherwise to communicate with the Court in any way. Therefore, the complaint and the action will be dismissed without prejudice for failure to comply with the April 17 order within the time allowed.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Mr. Martínez files a notice of appeal he must also pay the full \$455.00 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the complaint (ECF No. 1) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Victor Martínez, within the time allowed, to comply with the order of April 17, 2012, directing him to pay the \$350.00 filing fee, and for his failure to prosecute. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 29<sup>th</sup> day of May, 2012.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK  
Senior Judge, United States District Court