

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOSE ARZUAGA

V.

PRISONER

CASE NO. 3:12CV668 (DJS)

STEVEN FAUCHER, ET AL.

RULING AND ORDER

The plaintiff is an inmate at the Northern Correctional Institution in Somers, Connecticut. He moves the Court for leave to file an amended application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this civil rights action.

The plaintiff filed an application to proceed *in forma pauperis* when he commenced this action on May 3, 2012. The court granted the application on May 10, 2012. The plaintiff now seeks to file an amended application because he neglected to include information pertaining to Supplemental Security Income benefits that the Social Security Administration had awarded him in January 2010. The motion for leave to file an amended application is granted. The court now considers the amended application.

"It is well settled that the decision to proceed *in forma pauperis* in civil cases is committed to the sound discretion of the district court." *Jones v. Lara*, No. 3:11CV706 (AWT), 2011 U.S. Dist. LEXIS 75323, at *1-2 (D. Conn. July 12, 2011); see also *Monti v. McKeon*, 600 F. Supp. 112, 113 (D. Conn. 1984). In exercising this discretion under § 1915(a), the Court must determine whether the burden of paying the fees for filing and service would either

hamper the plaintiff's ability to obtain the necessities of life or force him to abandon the action. See *Adkins v. E.I. Dupont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948); *Potnick v. Eastern State Hospital*, 701 F.2d 243, 244 (2d Cir. 1983).

The plaintiff states that approximately \$6,000.00 in Supplemental Security Income is available to him. The court takes judicial notice of a motion to dismiss filed in another case pending in this district, *Arzuaga v. Cieboter, et al.*, Case No. 3:12cv743(DJS). Attached to the motion to dismiss is deposition testimony by the plaintiff acknowledging that he had designated his mother and father as payees with regard to the over \$6,000.00 Supplemental Security Income award, but that neither he nor his parents had accepted or received the award. (See *id.* at Mot. Dismiss, Doc. No. 39, Ex. 2.) He indicated that he had chosen not accept the award while he was in prison because the State of Connecticut might try to take all or a portion of the award to pay for his costs of incarceration. (See *id.*)

As a prisoner, the plaintiff bears no costs for room or board and he has acknowledged that no one is dependent on him for support. From this information, this Court can discern no reason why requiring this plaintiff to pay the \$350.00 filing fee to commence this action would force him to forego the necessities of life or abandon this action. See *Potnick*, 701 F.2d at 244. The plaintiff has not demonstrated a substantial showing of indigence

which is required before *in forma pauperis* status may be granted under § 1915.

In light of the financial information submitted by the plaintiff, it would be inappropriate to permit the action to proceed in this Court, without payment of fees, under 28 U.S.C. § 1915. Accordingly, the Motion for Leave to File an Amended Application to Proceed *In Forma Pauperis* [**Doc. No. 14**] is **GRANTED**. After docketing this ruling, the Clerk is directed to docket as Doc. # 19 the Amended Application to Proceed *In Forma Pauperis* that is attached to the motion for leave. The Amended Application to Proceed *In Forma Pauperis* [**Doc. No. 19**] is **DENIED**. In view of this order, the court **VACATES** the prior Order [**Doc. No. 3**] granting the plaintiff leave to proceed *in forma pauperis*.

All further proceedings in the matter shall be held in abeyance for 30 days pending the plaintiff's delivery of the filing fee in the amount of \$350.00 (cash, money order or bank check made payable to the Clerk of Court) to the Clerk's Office, 915 Lafayette Blvd., Bridgeport, Connecticut, 06604. Failure to tender the filing fee within 30 days of this Order will result in the dismissal of this action.

SO ORDERED this 19th day of June, 2013, at Hartford, Connecticut.

/s/ DJS
DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE