

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

DONALD RICHARD SHEA; DONALD
FRANK SHEA; and ELENA PECHIN
JOHNSON,

Plaintiff,

v.

Case No. 6:14-cv-1330-Orl-37TBS

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

This cause is before the Court on the following:

1. Pro Se Plaintiff Donald Richard Shea's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2), filed August 18, 2014;
2. Report and Recommendation of U.S. Magistrate Judge Thomas B. Smith (Doc. 4), filed August 20, 2014; and
3. Answer to the Response to a Report and Recommendation and Motion to Keep the Complaint in Orlando, Florida Division (Doc. 6), filed September 2, 2014.

On August 18, 2014, Pro Se Plaintiff Donald Richard Shea filed a hand-written complaint against Defendant Commissioner of Social Security concerning its denial of Plaintiff's claim for benefits. (Doc. 1, pp. 2–3.) Under his signature on his Complaint, Plaintiff provided a mailing address in Allen, Texas. (*Id.* at 10.) Plaintiff also filed an application to proceed *in forma pauperis* advising that he is homeless, but he has a

monthly income of \$741.00. (Doc. 2.) The application was referred to U.S. Magistrate Judge Thomas B. Smith, who issued a Report and Recommendation on August 20, 2014 (Doc. 4 (“R&R”)). Based on the Texas address listed on the Complaint, the R&R concludes that proper venue for this action is in the U.S. District Court for the Eastern District of Texas—not this Court. (*Id.* at 2.) Accordingly, the R&R recommends that the Court: (1) deny the application to proceed *in forma pauperis*; and (2) transfer this action to the U.S. District Court for the Eastern District of Texas. (*Id.*) Plaintiff filed objections to the R&R. (Doc. 6.)

When a party objects, the district court must “make a de novo determination of those portions” of an R&R to which objection is made. 28 U.S.C. § 636(b)(1). The district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*

Here, Plaintiff filed an objection to the R&R advising that he does not reside at the Texas address; rather, he is homeless in Orlando. (Doc. 6.) Plaintiff further advised that he provided his mother’s Texas address on his Complaint simply to ensure that he received mail; however, he is now using a new mailing address in Winter Park, Florida. (*Id.*) In light of these representations, the Court will reject the recommendation in the R&R that venue is improper and that this action should be transferred to the U.S. District Court for the Eastern District of Texas.

Upon independent review, the Court finds that Plaintiff’s application to proceed *in forma pauperis* is due to be denied with leave to reassert after Plaintiff files an amended complaint. The hand-written document filed by Plaintiff as his complaint is difficult to understand and is silent concerning the grounds for venue and jurisdiction. (Doc. 1.) Further, Plaintiff appears to assert unspecified claims on behalf of his father and

mother; however, as a layperson, Plaintiff may only assert claims on his own behalf. Accordingly, the complaint is due to be dismissed.

The Court will afford Plaintiff with an opportunity to file an amended complaint in compliance with the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Court. In particular, Plaintiff should review Federal Rules of Civil Procedure 8(a), 8(d), and 10, and Local Rules 1.05 and 1.06. These rules generally require that a complaint be comprised of “numbered paragraphs, each limited as far as practicable to a single set of circumstances,” and include: (1) a “short and plain” statements of his claim and the grounds for the court’s jurisdiction; (2) a “demand for the relief” sought by plaintiff; and (3) “simple, concise, and direct” allegations. Plaintiff is further advised that additional information and resources are available on the Court’s website in a section entitled, “Proceeding Without a Lawyer.”¹

CONCLUSION

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. Report and Recommendation of U.S. Magistrate Judge Thomas B. Smith (Doc. 4) is **REJECTED**.
2. Pro Se Plaintiff Donald Richard Shea’s Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2) is **DENIED with leave to reassert**.
3. The Complaint (Doc. 1) is **DISMISSED without prejudice**.
4. On or before October 21, 2014, Plaintiff may file an amended complaint and a renewed application to proceed in District Court without prepaying fees or costs.

¹ That website is available at: http://www.flmd.uscourts.gov/pro_se/default.htm.

5. If Plaintiff does not file an amended complaint in the time prescribed, this action may be dismissed for failure to prosecute.

DONE AND ORDERED in Chambers in Orlando, Florida, on September 22, 2014.



ROY B. DALTON JR.
United States District Judge

Copies:

Counsel of Record

Pro Se Plaintiff