

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

EMMANUEL AZZUN,

Plaintiff,

Vs.

No. 09-4144-SAC

KANSAS DEPARTMENT OF
HEALTH AND ENVIRONMENT,

Defendant.

MEMORANDUM AND ORDER

This case comes before the court on its review of the Magistrate Judge's report and recommendation regarding plaintiff's appeal from the denial of plaintiff's motion for leave to proceed in forma pauperis. The Magistrate found that the plaintiff had sufficient resources to pay the filing fee, so recommended that his motion be denied.

The plaintiff timely filed objections (Dk. 15) to the Report and Recommendation, alleging two matters: 1) that although his car and house is in both his and his wife's name, he has "no equity" in either because his wife pays for them; and 2) he is supposed to bring in least \$2,000 each month to support his children, but he presently cannot do so. Dk. 15.

This court's standard of review for a report and recommendation of a magistrate judge is established by statute. See 28 U.S.C. § 636(b)(1); Fed.R.Civ.Pro. 72(b)(3). Having reviewed the record which relates to the plaintiff's objections, the court finds that the proposed findings or recommendations are neither erroneous nor arbitrary. For the reasons cited by the Magistrate Judge in the Report, including the plaintiff's equity in his house and the discretionary nature of some of plaintiff's expenses including cable

television, the court finds that the denial of the plaintiff's request to proceed in forma pauperis is appropriate. Accordingly, the court adopts in whole the findings and recommendations made by the Magistrate Judge.

IT IS THEREFORE ORDERED that the report and recommendation (Dk.13) is accepted and adopted as the ruling of this court.

Dated this 22nd day of December, 2009.

s/ Sam A. Crow _____
Sam A. Crow, U.S. District Senior Judge