

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 ROBERT KENT SCHMITT,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting
10 Commissioner of Social Security,

11 Defendant.

Case No. 2:17-cv-01349-RFB-PAL

ORDER

(Mot. for Decision – ECF No. 10)

12 This matter is before the court on the Statement Regarding Service (ECF No. 13), filed
13 August 11, 2017, by Defendant Nancy A. Berryhill. Plaintiff Robert Kent Schmitt filed a Response
14 (ECF No. 14) on August 16, 2017. Also before the court is Mr. Schmitt’s Motion for Final
15 Decision (ECF No. 10).

16 This case involves judicial review of an administrative action by the Social Security
17 Administration (the “Agency”) denying Schmitt’s claim for benefits under the Social Security Act.
18 Mr. Schmitt commenced this action on May 11, 2017, by filing an Application to Proceed *In*
19 *Forma Pauperis* (ECF No. 1) and proposed complaint. The court denied the application without
20 prejudice and gave Schmitt until July 6, 2017, to file the long form *in forma pauperis* (“IFP”)
21 application, or pay the \$400.00 filing fee. *See* Order (ECF No. 6). He opted to pay the filing fee.
22 *See* Receipt of Payment (ECF No. 7). Thus, the Complaint (ECF No. 9) is now filed on the docket.

23 On July 13, 2017, the court entered an Order (ECF No. 8) instructing counsel for the
24 Commissioner to file a statement with the court by August 11, 2017, indicating whether the
25 Commissioner acknowledges effective service. One week later, before the Commissioner had
26 responded to the court’s order or filed an answer, Plaintiff filed a Motion for Final Decision (ECF
27 No. 10). His motion asks the district court to make a final decision based on good cause shown,
28 without remanding the case to the Social Security Administration.

1 On August 11, 2017, the Commissioner filed a Statement (ECF No. 13) acknowledging
2 effective service. The Commissioner indicates she is prepared to file an answer. However,
3 because she has not yet filed an answer or administrative record, the Commissioner asks the court
4 to stay or hold in abeyance Plaintiff’s Motion for Final Decision (ECF No. 10) and issue a
5 scheduling order.

6 Plaintiff’s Response (ECF No. 14) asserts that the court should order the Commissioner to
7 pay him \$179.48 in expenses for service of the complaint, which he sent by certified mail on May
8 13, 2017, to the Social Security Administration Office of the General Counsel, Region IX; the
9 United States Attorney for District Court of Nevada; and the Attorney General of the United States.
10 *See* Affidavit of Service (ECF No. 4). Plaintiff states he also included a request to waive service
11 of the summons. The Commissioner did not respond to his request to waive formal service, but
12 counsel filed a Notice of Appearance (ECF No. 3) on May 19, 2017. Because the court entered an
13 order requiring counsel for the Commissioner to file a statement acknowledging effective service,
14 Plaintiff argues that that the Commissioner’s failure to return the waiver warrants an award of fees.

15 Under Rule 4 of the Federal Rules of Civil Procedure, an “*individual, corporation, or*
16 *association* that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary
17 expenses of serving the summons.” Fed. R. Civ. P. 4(d)(1) (emphasis added). Plaintiff may
18 request a waiver of formal service of a summons from such defendants. *Id.* If a defendant fails,
19 without good cause, to sign and return a waiver requested by a plaintiff the court must impose the
20 expenses of service on the defendant. *See* Fed. R. Civ. P. 4(d)(2).

21 The Social Security Administration and the Commissioner are not “individuals,
22 corporations, or association” that are subject to service under Rule 4(e), (f), or (h). *See* Fed. R.
23 Civ. P. 4(d)(1). Rather, the Social Security Administration and the Commissioner are subject to
24 service under Rule 4(i), which governs service to the “United States and Its Agencies,
25 Corporations, Officers, or Employees.” Fed. R. Civ. P. 4(i). Because the statute does not authorize
26 the imposition of service costs on the Social Security Administration or the Commissioner,
27 Plaintiff’s request is therefore denied.

28

1 Additionally, Plaintiff's motion is premature. The court's standard practice in cases
2 reviewing an Agency decision is to enter a scheduling order after the Commissioner files an
3 answer. The scheduling order requires the Commissioner to file a certified copy of the
4 administrative record under seal within two weeks, and provides additional deadlines for the
5 parties to brief a motion for reversal and/or remand. The court decides an appeal of a decision
6 denying benefits based on the administrative record and briefs of the parties. In general, a plaintiff
7 has 30 days after receiving the administrative record to file a motion, the Commissioner then has
8 30 days to respond, and the plaintiff may file a reply brief within 20 days. The scheduling order
9 also outlines certain requirements for the motion. A scheduling order will be entered shortly after
10 the Commissioner files an answer. The court appreciates that it is difficult for *pro se* parties to
11 litigate their claims; thus, plaintiffs are advised to familiarize themselves with the Federal Rules
12 of Civil Procedure, the Local Rules of Practice, and relevant case law. Plaintiff's motion is denied
13 without prejudice.


14 Accordingly,

15 **IT IS ORDERED:**

- 16 1. Plaintiff Robert Kent Schmitt's Motion for Final Decision (ECF No. 10) is DENIED
17 WITHOUT PREJUDICE.
- 18 2. The Commissioner shall file an answer by September 22, 2017.
- 19 3. The court will issue a scheduling order setting a briefing schedule shortly after the
20 Commissioner files an answer.

21 Dated this 22nd day of August, 2017.

22
23
24
25
26
27
28



PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE