

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HAL GOLDBLATT,

Plaintiff,

vs.

NANCY A. BERRYHILL, Acting Commissioner
of Social Security,

Defendant.

Case No. 2:17-cv-02193-MMD-VCF

ORDER

APPLICATION TO PROCEED IN FORMA PAUPERIS
(EFC NO. 1) AND COMPLAINT (EFC NO. 1-2)

This matter concerns Plaintiff Hal Goldblatt's ("Mr. Goldblatt's") civil action against Nancy A. Berryhill, the acting Commissioner of the Social Security Administration. See ECF No. 1-2. Before the Court are Mr. Goldblatt's application to proceed in forma pauperis (ECF No. 1) and complaint (ECF No. 1-2). Mr. Goldblatt's application to proceed in forma pauperis is granted. For the reasons stated below, Mr. Goldblatt's complaint is allowed to proceed.

I. In Forma Pauperis Application

The standard governing in forma pauperis eligibility under 28 U.S.C. § 1915(a)(1) is "unable to pay such fees or give security therefor." This means that an IFP applicant must demonstrate by means of a financial affidavit that he or she cannot afford court fees without undue hardship—that is, paying for the costs of the suit would require the applicant to give up the basic necessities of life. See *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948) ("[A]n affidavit is sufficient which states that one cannot because of his poverty 'pay or give security for the costs ... and still be able to provide[] himself and dependents []with the necessities of life.[]"). An IFP applicant need not be "absolutely destitute" to qualify for IFP status. *Id.* Of course, "the same even-handed care must be employed to assure that federal

1 funds are not squandered to underwrite, at public expense ... the remonstrances of a suitor who is
2 financially able, in whole or in material part, to pull his own oar.” See *Temple v. Ellerthorpe*, 586 F. Supp.
3 848, 850 (D.R.I. 1984).

4 Mr. Goldblatt has submitted the affidavit required by 28 U.S.C. § 1915(a) showing an inability to
5 prepay fees and costs or give security for them. See ECF No. 1. Mr. Goldblatt’s IFP application states
6 that he is unemployed and has no monthly income other than \$750 of employment income from his spouse.
7 *Id.* at 1. Mr. Goldblatt’s net assets are limited. *Id.* Mr. Goldblatt has adequately shown his inability to
8 pay fees and costs. The request to proceed in forma pauperis will be granted under § 1915(a). The Court
9 will now review Mr. Goldblatt’s Complaint.

10 **II. Screening the Complaint Under § 1915(e)**

11 **A. Legal Standards**

12 Upon granting a request to proceed in forma pauperis, courts must screen the complaint. See 28
13 U.S.C. § 1915(e); see also *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (“[S]ection 1915(e) applies
14 to all in forma pauperis complaints.”) (emphasis added). Specifically, courts may dismiss a case if the
15 action is legally frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks
16 monetary relief from a defendant who is immune from such relief. *Id.* The purpose of this screening
17 process is to “discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits
18 that paying litigants generally do not initiate because of the cost of bringing suit.” See *Neitzke v. Williams*,
19 490 U.S. 319, 327 (1989). Indeed, the statutory benefit to proceed in forma pauperis is conferred as a
20 privilege only, not as a matter of right. See *Williams v. Field*, 394 F.2d 329, 332 (9th Cir. 1968).

21 When a plaintiff seeks to proceed in forma pauperis, courts require that the plaintiff’s complaint
22 provide sufficient notice of the basis of the claims presented and state a claim for relief. See, e.g., *Watison*

1 v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012). Under Federal Rule of Civil Procedure 8, a complaint
2 must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.”
3 Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009). Detailed factual allegations are not required. Id. But
4 “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” Bell
5 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). All material allegations in the complaint are accepted
6 as true and are to be construed in the light most favorable to the plaintiff. Russell v. Landrieu, 621 F.2d
7 1037, 1039 (9th Cir. 1980). Where the claims in a complaint fail to cross the line from conceivable to
8 plausible, they should be dismissed. See Twombly, 550 U.S. 544, 570. When a court dismisses a
9 complaint under § 1915(e), however, the plaintiff should be given leave to amend the complaint with
10 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies
11 could not be cured by amendment. Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (citation
12 omitted).

14 **B. The Complaint States a Claim Upon Which Relief may be Granted**

15 Mr. Goldblatt’s Complaint arises from an unfavorable decision by the Commissioner of the Social
16 Security Administration (hereinafter “Commissioner”). See EFC No. 1-2. Mr. Goldblatt asserts that she
17 is disabled as that term is defined in the Social Security Act. Id. at 2. Mr. Goldblatt alleges that he filed
18 an application for disability insurance benefits under Title II of the Social Security Act. Id. According to
19 Mr. Goldblatt, the Commissioner denied his claim for benefits on February 9, 2016. Id. Mr. Goldblatt
20 alleges that he has timely appealed the decision of the Commissioner to this Court, and requests that this
21 Court reverse the Commissioner’s decision or, in the alternative, remand the action for a new hearing. Id.
22 at 3. In particular, Mr. Goldblatt objects to the Commissioner’s decision on the following grounds:

24 The ALJ erred by failing to include all of the limitations opined by the
25 experts whose opinions he adopted in the RFC finding; as a result, the findings at the subsequent steps of the sequential evaluation based on the

1 deficient RFC are in error. SSR 96-8p; Reddick v. Chater, 157 F.3d 715,
2 725 (9th Cir. 1998).

3 The ALJ failed, contrary to Agency policy and Ninth Circuit precedent, to
4 appropriately and adequately evaluate the opinions of Plaintiff's treating
5 sources, which establish work-related limitations far greater than those
6 identified in the ALJ's residual functional capacity finding (RFC). 20
7 C.F.R. § 404.1527; Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014);
8 Molina v. Astrue, 674 F.3d 1104 (9th Cir. 2012); Bayliss v. Barnhart, 427
9 F.3d 1211 (9th Cir. 2005); Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
10 1995).

11 The ALJ failed in his duty to "develop the record for and against awarding
12 benefits." Sims v. Apfel, 530 U.S. 103, 110 (2000); Mayes v. Massanari, 276
13 F.3d 453, 459 (9th Cir. 2001).

14 See EFC No. 1-2 at 2-3.

15 The Court finds that Mr. Goldblatt has asserted a claim upon which relief can be granted. The
16 Complaint also establishes that Mr. Goldblatt has exhausted his administrative remedies and that the civil
17 action was timely commenced. Under Title II of the Social Security Act, the Court has jurisdiction over
18 this matter. See 42 U.S.C. §§ 401-433. Construing the allegations in a light most favorable to Mr.
19 Goldblatt, the Court finds that Mr. Goldblatt's Complaint has asserted a claim upon which relief can be
20 granted for initial screening purposes under 28 U.S.C. § 1915.

21 ACCORDINGLY,

22 IT IS ORDERED that Mr. Goldblatt's application to proceed in forma pauperis is GRANTED.

23 IT IS FURTHER ORDERED that Mr. Goldblatt is permitted to maintain the action to its
24 conclusion without the necessity of prepayment of any additional fees, costs, or security. This order
25 granting in forma pauperis status does not extend to the issuance of subpoenas at government expense.


IT IS FURTHER ORDERED that the Clerk of the Court file the complaint (ECF No. 1-2) and
serve the Commissioner of the Social Security Administration by sending a copy of the summons and
Complaint (ECF No. 1-2) by certified mail to: (1) the Attorney General of the United States, Department

1 of Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530; and (2) Office of the
2 Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St., Suite 899, San
3 Francisco, CA 94105-1545.

4 IT IS FURTHER ORDERED that the Clerk of the Court issue summons to the United States
5 Attorney for the District of Nevada and deliver the summons and Complaint (ECF No. 1-2) to the U.S.
6 Marshal for service.

7 IT IS FURTHER ORDERED that from this point forward, Mr. Goldblatt must serve upon
8 defendant, or defendant's attorney if she has retained one, a copy of every pleading, motion, or other
9 document submitted for consideration by the Court. Mr. Goldblatt must include with the original paper
10 submitted for filing a certificate stating the date that a true and correct copy of the document was mailed
11 to the defendant or defendant's counsel. The Court may disregard any paper received by a district judge,
12 magistrate judge, or the Clerk which fails to include a certificate of service.

13 DATED this 25th day of August, 2017.

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16 CAM FERENBACH
17 UNITED STATES MAGISTRATE JUDGE