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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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STACY HADDEN,

Plaintiff,

Case No. 2:17-cv-02817-MMD-GWF

v.

NANCY A. BERRYHILL,
Commissioner of Social Security,

Acting

Defendant.

ORDER

This matter is before the Court on the screening of Plaintiff's Second Amended Complaint (ECF No. 7), filed on January 2, 2018.

BACKGROUND

The Court granted Plaintiff's Application to Proceed In Forma Pauperis (ECF No. 1) on November 21, 2017. The Court screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(e) and dismissed her Complaint with leave to amend. The Court set forth the requirements to sufficiently allege a social security appeal, instructed Plaintiff to correct noted deficiencies, and instructed her to file her Amended Complaint no later than December 29, 2017. See ECF No. 3. On December 14, 2017, Plaintiff filed her amended complaint (ECF No. 5). The Court screened Plaintiff's Amended Complaint and dismissed it with leave to amend. See ECF No. 6.

DISCUSSION

Upon granting a request to proceed in forma pauperis and granting leave to amend, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion

1 thereof, should be dismissed for failure to state a claim upon which relief may be granted “if it
2 appears beyond a doubt that the plaintiff can prove no set of facts in support of his claims that
3 would entitle him to relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). When a
4 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
5 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
6 complaint that the deficiencies could not be cured by amendment. See *Cato v. United States*, 70
7 F.3d 1103, 1106 (9th Cir. 1995).

8 To satisfy the screening requirements with respect to social security appeals, a plaintiff
9 must set forth the following: (1) the plaintiff must establish that she has exhausted her
10 administrative remedies pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced
11 within sixty days after notice of a final decision; (2) the complaint must indicate the judicial district
12 in which the plaintiff resides; (3) the complaint must state the nature of the plaintiff’s disability
13 and when the plaintiff claims she became disabled; and (4) the complaint must contain a plain,
14 short, and concise statement identifying the nature of the plaintiff’s disagreement with the
15 determination made by the Social Security Administration and show that the plaintiff is entitled to
16 relief. *Montoya v. Colvin*, 2016 WL 890922, at *2 (D. Nev. Mar. 8, 2016) (citing *Soete v. Colvin*,
17 2013 WL 5947231, *2 (D. Nev. Nov. 4, 2013); *Pitcher v. Astrue*, 2012 WL 3780354, *1 (D. Nev.
18 Aug. 30, 2012)).

19 Plaintiff alleges a claim against the Social Security Administration (SSA), challenging its
20 denial of disability insurance benefits. Plaintiff does not specify if she also applied for
21 supplemental security income. She alleges that she was disabled. Plaintiff claims that the Social
22 Security Commissioner, initially and upon reconsideration, denied her applications for disability
23 insurance benefits. Plaintiff states that she requested review of the ALJ’s decision with the
24 Appeals Council, which was denied. Plaintiff now seeks judicial review of that final agency
25 decision. Federal courts only have jurisdiction to conduct judicial review of the SSA’s final
26 decisions. See 42 U.S.C. § 405(g); *Klemm v. Astrue*, 543 F.3d 1139, 1144 (9th Cir. 2008); see
27 also *Cilifano v. Sanders*, 430 U.S. 99, 107–09 (1977). Plaintiff appears to have fully exhausted
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1 her administrative remedies with the SSA. The Court will therefore allow Plaintiff's complaint
2 to proceed as a petition for judicial review of a final agency decision. Accordingly,

3 **IT IS ORDERED** that the Clerk of the Court shall file the Complaint (ECF No. 7).


4 **IT IS FURTHER ORDERED** that the Clerk of the Court shall serve the Commissioner
5 of the Social Security Administration by sending a copy of summons and Complaint by certified
6 mail to: (1) Office of the Regional Chief Counsel, Region IX, Social Security Administration,
7 160 Spear Street, Suite 899, San Francisco, California 94105, and (2) the Attorney General of the
8 United States, Department of Justice, 950 Pennsylvania Ave. NW, Washington DC 20530.

9 **IT IS FURTHER ORDERED** that the Clerk of the Court shall issue summons to the
10 United States Attorney for the District of Nevada, and deliver the summons and Complaint to the
11 U.S. Marshal for service.

12 **IT IS FURTHER ORDERED** that Defendants shall have **sixty (60) days** from the date
13 of service to file their answer or responsive pleading to Plaintiff's Complaint in this case.

14 **IT IS FURTHER ORDERED** that henceforth, Plaintiff shall serve upon Defendant, or
15 their attorney if they have retained one, a copy of every pleading, motion, or other document
16 submitted for consideration by the court. Plaintiff shall include with the original paper submitted
17 for filing a certificate stating the date that a true and correct copy of the document was mailed to
18 Defendant or their counsel. The court may disregard any paper received by a district judge,
19 magistrate judge, or the Clerk which fails to include a certificate of service.

20 Dated this 23rd day of October, 2018.

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23 GEORGE FOLEY, JR.
24 UNITED STATES MAGISTRATE JUDGE
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