

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHNNA HAYS,

Plaintiff,

v.

CV 17-700 WPL

NANCY A. BERRYHILL,
Acting Commissioner of Social Security Administration,

Defendant.

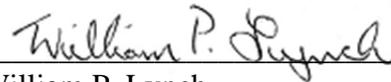
ORDER

Plaintiff Johnna Hays filed a motion to dismiss without prejudice and to waive the filing fee (Doc. 3) upon discovery that she did not exhaust her administrative remedies. The fee for instituting any civil action, suit or proceeding in this District is \$400.00, which is comprised of the \$350.00 filing fee, *see* 28 U.S.C. § 1914(a), and a \$50.00 administrative fee. A plain reading of the relevant statutes, however, establishes that the filing fee is not waivable. 28 U.S.C. § 1914 (the “clerk of each district court shall require the parties instituting any civil action, suit or proceeding . . . to pay a filing fee . . .”); 28 U.S.C. § 1915(a) (the Court “may authorize the commencement . . . of any suit, action or proceeding, civil or criminal . . . without prepayment of fees”). Section 1915(a) does not permit litigants to avoid payment of fees, but rather the prepayment of fees. *See Brown v. Eppler*, 725 F.3d 1221, 1231 (10th Cir. 2013). Hays is therefore obligated to pay the \$400.00 filing fee for instituting this case.

A true copy of this order was served on the date of entry--via mail or electronic means--to counsel of record and any *pro se* party as they are shown on the Court’s docket.

The motion is denied to the extent that Hays seeks waiver of the filing fee. Pending collection of the filing fee, the motion to dismiss without prejudice is granted. Judgment of dismissal without prejudice will enter as soon as the filing fee has been paid.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "William P. Lynch". The signature is written in black ink and is positioned above a horizontal line.

William P. Lynch
United States Magistrate Judge

A true copy of this order was served on the date of entry--via mail or electronic means--to counsel of record and any *pro se* party as they are shown on the Court's docket.