

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
AUSTIN DIVISION**

ETHEL LOU WEST	§	
	§	
PLAINTIFF,	§	CIVIL ACTION NO. 1:15-CV-216-SS
	§	
V.	§	
	§	
SOCIAL SECURITY	§	
ADMINISTRATION	§	
OF TEXAS AND MISSOURI,	§	
DEFENDANTS	§	

**ORDER ON REQUEST TO PROCEED IN FORMA PAUPERIS
AND MOTION TO APPOINT COUNSEL AND
REPORT AND RECOMMENDATION ON THE MERITS OF THE CLAIMS**

TO: THE HONORABLE SAM SPARKS
UNITED STATES DISTRICT JUDGE

The Magistrate Court submits this Report and Recommendation to the United States District Court pursuant to 28 U.S.C. §636(b) and Rule 1 of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges.

Before the Court is Plaintiff’s Complaint [#1], Motion to Proceed in Forma Pauperis [#2], Motion to Appoint Counsel [#3], and Supplement to Complaint [#6]. Because Plaintiff is requesting permission to proceed in forma pauperis, the merits of her claims are subject to initial review pursuant to 28 U.S.C. § 1915(e).

I. REQUEST TO PROCEED IN FORMA PAUPERIS

The undersigned has reviewed Plaintiff’s financial affidavit and determined she is indigent and should be granted leave to proceed in forma pauperis. It is therefore ORDERED that Plaintiff is GRANTED in forma pauperis status and that her complaint be filed without

payment of fees or costs or giving security therefor pursuant to 28 U.S.C. § 1915(a). This indigent status is granted subject to a later determination the action may be dismissed if the allegation of poverty is untrue or the action is found frivolous or malicious pursuant to 28 U.S.C. § 1915(e). Plaintiff is further advised, although she has been granted leave to proceed in forma pauperis, a Court may, in its discretion, impose costs of court at the conclusion of this lawsuit, as in other cases. *See Moore v. McDonald*, 30 F.3d 616, 621 (5th Cir. 1994).

As stated below, the undersigned has made a § 1915(e) review of the claims made in this complaint and is recommending dismissal of Plaintiff's claims. Therefore, ***service upon Defendants should be withheld*** pending the District Court's review of the recommendations made in this report. If the District Court declines to adopt the recommendations, then service should be issued at that time upon Defendant.

II. REVIEW OF THE MERITS OF THE CLAIMS

A. Factual Allegations

Plaintiff¹ contends the Social Security Administration (1) has improperly deducted her Qualified Medicare Beneficiary payments from her monthly benefit payment, (2) is improperly seeking repayment of an alleged prior overpayment to Plaintiff, and (3) has failed to timely grant or deny the application for disability of Plaintiff's minor son, Jamallin West. Compl. [#1] at 1. Plaintiff additionally alleges the Social Security Administration has caused the local police to harass her by "GPSing" her and her family, has caused the Post Office to tamper with their mail, and has caused other unnamed government agencies to bug their phones. *Id.* Finally, she asserts

¹ Plaintiff styles this complaint "Ethel Lou West and Jamallin West v. Social Security Administration. Jamallin West is Plaintiff's minor son. Because Plaintiff is not an attorney, she cannot represent Jamallin West and lacks standing to bring claims on his behalf. *Avdeef v. Rockline Indus.*, 554 Fed App'x 269, 270 n.3 (5th Cir. 2014); *see also Sprague v. Dep't of Family and Protective Servs.*, 547 Fed App'x 507, 508 (5th Cir 2013) (notwithstanding the "next friend" language of Federal Rule of Civil Procedure 17(c)(2), "non-attorney parents generally may not litigate the claims of their minor children in federal court.")

the Social Security Administration has caused “any motels and hotels to co-hurst with their wrong doing.” *Id.*

In support of her claims, Plaintiff has attached a December 4, 2014 letter from the Social Security Administration office in Independence, Missouri, waiving collection of part of a Social Security overpayment and noting “[W]e will recontact you in the near future to set up a personal conference regarding the remaining overpayment At this time, we cannot approve the waiver of this amount but we will not collect this amount until we make a final decision. After you attend the personal conference, we will make a decision regarding the remaining amount.” Suppl. to Compl. [#6], Letter of Dec. 4, 2014. The letter included contact information for a Mrs. D. Helbling at the local Social Security office. *Id.* Plaintiff makes no mention of any follow up with Mrs. Helbling or attendance at the proposed personal meeting. Plaintiff has also attached some basic, general information, whose source is unknown, regarding the Qualified Medicare Beneficiary Program. *Id.* at “Important Information—angelwest89@gmail.com,” and what appears to be a screenshot of her Social Security benefit history from March 3, 2014 to March 3, 2015. *Id.* at “My Social Security.”²

² Plaintiff has also attached to her complaint (1) several apparently unrelated documents concerning a prior lawsuit against The Hills Apartments, Civil Action No. 4:14-CV-630-O, which was dismissed without prejudice for failure to prosecute on September 3, 2014, (2) the citation and original petition in a child support action concerning the two children of Ethel Ferrell (Plaintiff’s maiden name), and James West, her current husband; (3) a June 2013 communication from the Dallas County Public Defender’s Office to James West (not a party to the instant suit) concerning a contempt order entered against James West, in Cause No. 09-18430, *In re Interest of West*, a child support action concerning a child James West had with Shanet Lashay Clark, (4) a letter of complaint from James West addressed to the Texas Bar Judicial Board complaining about the procedure and outcome of the child support action regarding his child with Shanet Lashay Clark and requesting removal of various offenses from his criminal history record, (5) a letter from James West to his “Power Attorney” explaining the personal issues behind his child support dispute with Shanet Lashay Clark, and (6) various court documents from the child support hearing concerning the child of James West and Shanet Lashay Clark, including an Order Enforcing Child Support and Medical Support Obligation. Plaintiff has not explained how these attachments relate to her complaint against the Social Security Administration, nor is their connection apparent to the undersigned. After review of these materials, the undersigned is of the opinion they have no bearing on any claim asserted in the Complaint and do not impact the analysis of Plaintiff’s claims for relief.

As noted in footnote 2, Plaintiff has included a variety of additional documentation, the relevance of which is not immediately apparent, but which undisputably contains personal data identifiers of non-parties, including minor children. Plaintiff has been specifically informed of the need to redact such personally identifying data as names of minor children, social security numbers of any individual, the full birth date of any individual, and financial account numbers pertaining to any individual. See Clerk's Letter of March 17, 2015 [#5] at 2. Because the attachments to Plaintiff's Complaint [#1] contain voluminous amounts of the very type of personally identifiable sensitive data Plaintiff has been instructed to redact or refrain from filing, it is ORDERED that the Court Clerk shall restrict electronic access to this document. Plaintiff is specifically and personally ORDERED to refrain from filing any further unredacted personal data of non-parties, including names of minor children, the full social security numbers of any individual, the full birth date of any individual, complete financial account numbers pertaining to any individual, and personally identifiable health information of any individual.

B. Standard of Review

A district court "shall dismiss" a case brought in forma pauperis at any time if the court determines the action "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). A complaint may be dismissed as frivolous if it lacks an arguable basis in fact or law. *Ancar v. Sara Plasma, Inc.*, 964 F.2d 465, 468 (5th Cir 1992) (citing *Denton v. Hernandez*, 504 U.S. 25, 32, 112 S. Ct. 1728, 1733 (1992)). A claim lacks an arguable basis in law if it is based on an indisputably meritless legal theory. *Newsome v. E.E.O.C.*, 301 F.3d 227, 231 (5th Cir.), cert. denied, 123 S. Ct. 660 (2002); *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997). A claim lacks an arguable basis in fact if it encompasses claims which describe

“fantastic or delusional” scenarios, or which “rise to the level of the irrational or the wholly incredible.” *Denton*, 504 U.S. at 33, 112 S. Ct. at 1733; *see also Neitzke v. Williams*, 490 U.S. 319, 327-28, 109 S. Ct. 1827, 1831 (1989). A complaint fails to state a claim upon which relief may be granted when it fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1974 (2007).

The court must also initially examine the basis for federal subject matter jurisdiction. A party seeking to invoke the jurisdiction of a federal court must prove jurisdiction is proper. *Boudreau v. United States*, 53 F.3d 81, 82 (5th Cir. 1995). With regard to judicial review of decisions made by the Social Security Administration concerning benefits, overpayments, eligibility, and other matters, federal jurisdiction is limited by statute to review of a “final decision of the Secretary made after a hearing.” *Brandyburg v. Sullivan*, 959 F.2d 555, 558 (5th Cir. Tex. 1992) (citing *Califano v. Sanders*, 430 U.S. 99, 97 S. Ct. 980, 986 (1977)); *see also* 42 U.S.C. § 405(g). “If a statute requires a plaintiff to exhaust administrative remedies, [her] failure to do so deprives this court of subject-matter jurisdiction.” *Lowe v. Colvin*, 582 Fed. App’x 323, 324 (5th Cir. 2014) (unpublished) (citing *Taylor v. U.S. Treas. Dep’t*, 127 F.3d 470, 475 (5th Cir. 1997) (per curiam)).

C. Discussion

Plaintiff’s complaints concerning the Social Security Administration’s calculation of her benefits, overpayment, and the eligibility of her son for disability payments are all governed by the statutory exhaustion requirement of 42 U.S.C. § 405(g). Though Plaintiff has attached documentation showing that the Social Security office in Missouri offered to engage in an informal meeting process with her regarding her overpayment dispute, Plaintiff has not alleged or shown that she attended any such meeting or took any other action to exhaust her

administrative remedies as to any of her claims. Plaintiff does not complain of any final decision made after a hearing. Therefore, the Court has no jurisdiction over her claims. *Brandyburg*, 959 F.2d at 558.

With regard to Plaintiff's claims against the Social Security Administration concerning "GPSing," tampered mail, bugged phones, and "co-horsing" by various government agencies and private parties working at the behest of the Defendant, the Supreme Court has recognized that a court may dismiss a complaint as frivolous when its factual contentions are "clearly baseless." *Denton v. Hernandez*, 504 U.S. 25, 32, 112 S. Ct. 1728, 1733 (1992). This category encompasses claims which describe "fantastic or delusional" scenarios, or which "rise to the level of the irrational or the wholly incredible." *Id.* at 33; *see also Neitzke v. Williams*, 490 U.S. 319, 327-28, 109 S. Ct. 1827, 1831 (1989); *Ancar v. Sara Plasma, Inc.*, 964 F.2d 465, 468 (5th Cir. 1992). Plaintiff's claims that the Social Security Administration has induced the local police, the Post Office, and other unspecified government agencies and civilian hotels and motels to track and harass her are fantastic and delusional, and should therefore be dismissed as frivolous. *Neitzke*, 490 U.S. at 327-28.

The undersigned notes that Plaintiff Ethel Lou West currently has multiple claims pending before this Court, each of which the undersigned has recommended be dismissed for lack of jurisdiction, failure to state a cognizable claim for relief, and/or frivolousness. Ms. West has previously had multiple claims dismissed before the Northern District of Texas, where she is currently domiciled, for failure to prosecute and as frivolous. Under these circumstances, the undersigned specifically warns Ms. West that sanctions may become appropriate when a pro se litigant develops a history of submitting multiple frivolous claims. FED. R. CIV. P. 11; *Mendoza v. Lynaugh*, 989 F.2d 191, 195-97 (5th Cir. 1993).

Based on Ms. West's current conduct in the Western District and her past litigation conduct in the Northern District of Texas, the Court warns Ms. West that if she continues to file meritless, vague, and impossible claims, the Court may impose sanctions in the future. Such sanctions may include a broad injunction, barring her from filing any future actions in the Western District of Texas without leave of court. *See Filipas v. Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987) (order requiring leave of court before plaintiffs file any further complaints is proper method for handling complaints of prolific litigators).

III. RECOMMENDATION

The Magistrate Court hereby GRANTS Plaintiff's Application to Proceed In Forma Pauperis.

Because voluminous attachments to Plaintiff's Complaint [#1] contain personal data identifiers of nonparties, IT IS ORDERED that the Clerk of this Court shall restrict electronic access to this document.

Plaintiff is specifically and personally ORDERED to refrain from filing any further unredacted personal data of non-parties, including names of minor children, the full social security numbers of any individual, the full birth date of any individual, complete financial account numbers pertaining to any individual, and personally identifiable health information of any individual.

The undersigned RECOMMENDS the District Court dismiss Plaintiff's cause of action pursuant to 28 U.S.C. § 1915(e)(2)(B) and FURTHER RECOMMENDS that the District Court DENY all other pending motions and requests for relief.

IV. WARNING

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S. Ct. 466, 472-74 (1985); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).

To the extent that a party has not been served by the Clerk with this Report & Recommendation electronically, pursuant to the CM/ECF procedures of this District, the Clerk is ORDERED to mail such party a copy of this Report and Recommendation by certified mail, return receipt requested.

SIGNED on April 14, 2015.



MARK LANE
UNITED STATES MAGISTRATE JUDGE