

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

KYLE JAMES POTTRATZ,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 17-CV-134-JPS

ORDER

Kyle James Pottratz filed a complaint in this matter and a motion for leave to proceed without prepayment of the filing fee. (Docket #1 and #2). The Court may grant the plaintiff's motion to proceed without prepayment of the filing fee if it determines that: (1) the plaintiff is truly indigent and unable to pay the costs of commencing this action; and (2) the plaintiff's action is neither frivolous nor malicious. 28 U.S.C. §§ 1915(a), (e)(2).

As to the first requirement, the privilege to proceed without payment of costs and fees "is reserved to the many truly impoverished litigants who...would remain without legal remedy if such privilege were not afforded to them." *Brewster v. North Am. Van Lines, Inc.*, 461 F.2d 649, 651 (7th Cir. 1972). In his motion for leave to proceed *in forma pauperis*, the plaintiff made statements about his income under oath. (Docket #2). His statements show that his monthly income totals \$1,200.00, which comes entirely from his wife's wages. *Id.* at 2. The plaintiff himself is unemployed. *Id.* at 1. His only property is a low-value family vehicle. *Id.* at 3-4. The plaintiff states that his expenses include \$272.60 for child support, \$325.00 for rent, \$244.00 for car payments, and \$550.00 for other expenses. *Id.* at 2. The plaintiff explains that he must rely on his parents to help pay for bills, as they exceed his household

income. *Id.* at 4. As it appears that his expenses would meet or exceed his income, the Court is satisfied that the plaintiff is indigent and cannot afford the filing fee.

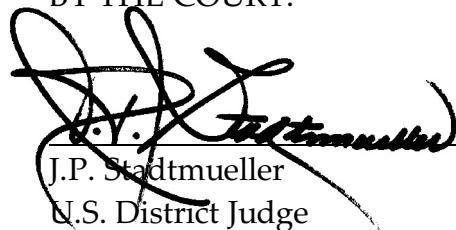
The plaintiff's action also is not frivolous or malicious. The plaintiff submitted a complaint, which includes an allegation that the Administrative Law Judge ("ALJ") erred in reaching a decision. (Docket #1 at 3). If that contention is true, then the Court will be obliged to vacate the ALJ's decision. Thus, the plaintiff's action is neither frivolous nor malicious.

Accordingly,

IT IS ORDERED that the plaintiff's motion for leave to proceed without prepayment of the filing fee (Docket #2) be and the same is hereby **GRANTED**.

Dated at Milwaukee, Wisconsin, this 1st day of February, 2017.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge