

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JARED CARBAJAL,

Plaintiff,

v.

Case No. 17-cv-747-pp

NANCY A. BERRYHILL,
Acting Commissioner of
Social Security,

Defendant.

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYMENT OF THE FILING FEE (DKT. NO. 3)**

On May 26, 2017, the plaintiff filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. The plaintiff also filed a motion for leave to proceed without prepayment of the filing fee. Dkt. No. 3.

In order to allow a plaintiff to proceed without paying the filing fee, the court must first decide whether the plaintiff has the ability to pay the filing fee, and if not, must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and (e)(2)(B)(i).

Based on the facts presented in the affidavit, the court concludes that the plaintiff does not have the ability to pay the filing fee. The plaintiff's affidavit states that he has a three-year-old son, for whom he provides support "as needed." Dkt. No. 2 at 1. The affidavit further states that the plaintiff is unemployed, without income, and lives with his grandparents. *Id.* at 2. The

plaintiff lists no monthly expenses and no money in any savings accounts. Id. at 3. He has a 2004 Toyota Avalon, which he values at \$3,000. Id. The court concludes from that information that the plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$50 administrative fee.

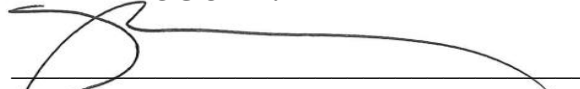
The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff's complaint argues that the Administrative Law Judge ("ALJ") made a decision not supported by substantial evidence and is contrary to law. At this early stage in the case, the court concludes that there may be a basis in law or fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to appeal without paying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 24th day of July, 2017.

BY THE COURT:


HON. PAMELA PEPPER
United States District Judge