

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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NANCY JO GRUETTNER  
o/b/o WILLIAM J. GRUETTNER (DECEASED),

Case No. 17-cv-799-pp

Plaintiff,

v.

NANCY A. BERRYHILL,  
Acting Commissioner of  
Social Security,

Defendant.

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

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On June 6, 2017, the plaintiff filed a complaint seeking judicial review of a final administrative decision denying her 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 she receives \$192.00 per month in food share benefits. Dkt. No. 3 at 2. Her spouse—on whose behalf she brings this claim—is deceased. *Id.* at 3. The plaintiff states that she has \$500 in a checking account, but lives with her

sister and has no income. Id. at 3, 6. The court concludes from that information that the plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$50 administrative fee.

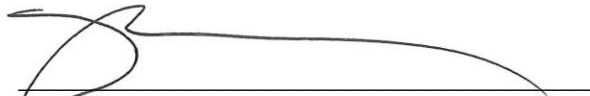
The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). 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 alleges that the Administrative Law Judge ("ALJ") made a decision not supported by substantial evidence and contrary to law. Dkt. No. 1 at 2. 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**