

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GREGORY FRANKOWIAK,

Plaintiff,

v.

Case No. 17-cv-1447-pp

NANCY BERRYHILL,
Acting Commissioner of Social Security,

Defendant.

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

On October 23, 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, or *in forma pauperis*. 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 indicates that he is responsible for supporting his fifteen-year-old son, dkt. no. 2 at 1, and that he has no income other than \$195.00 per month from Food Share, *id.*

at 2. He states that his monthly rent is \$485.00, id., and that he borrows money from his family to pay his rent, id. at 4. In addition, the plaintiff has a car worth approximately \$100.00, and no cash or money in a savings/checking account. Id. at 3. 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).

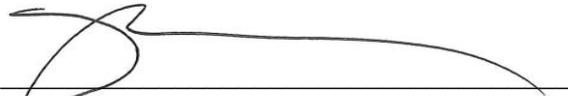
The plaintiff's complaint indicates that he believes the Commissioner's unfavorable conclusions and findings of fact are not supported by substantial evidence, and/or are contrary to law and regulation. Dkt. No. 1 at 2. At this early stage in the case, the court concludes that there may be a basis in 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 *in forma pauperis* (Dkt. No. 3).

Dated in Milwaukee, Wisconsin this 7th day of November, 2017.

BY THE COURT:

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a long horizontal line that tapers to the right.

HON. PAMELA PEPPER
United States District Judge