

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANN BENDEL,

Plaintiff,

Case No. 24-cv-680-pp

v.

MARTIN J. O'MALLEY,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING FILING FEE (DKT. NO. 2)**

The plaintiff has 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. She also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

Federal law requires a person who files a complaint in federal court to pay \$405—a filing fee of \$350 (28 U.S.C. §1914(a)) and a \$55 administrative fee (Judicial Conference of the United States District Court Miscellaneous Fee Schedule Effective the December 1, 2023, #14). To allow the plaintiff to proceed without prepaying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that she does not have the ability to pay the filing fee. The plaintiff's affidavit indicates

that she is not employed, she is not married and she has a 17-year-old son she is responsible for supporting. Dkt. No. 2 at 1. The only source of income listed by the plaintiff is \$3,000 from her 21-year-old son (it's not clear whether this is a monthly amount or the total amount received in the last twelve months). Id. at 2. The plaintiff lists monthly expenses of \$1,600 (\$400 per week) in rent, stating that she lives in a motel. She also lists other household expenses of "Food Stamps \$200.00." Id. The court assumes this means that the plaintiff receives \$200 per month in food stamps (although she did not list that under income) and spends that on food each month. The plaintiff does not own a home, a car or any other property of value; she has no cash on hand or in a checking or savings account. Id. at 3-4. The plaintiff states, "I have several Health issues. 1 – Pace maker, 2 – Cirrosis [sic] of Liver, 3 – Gout, 4 – Lower Back Pain – Severe. We make money month to month – can't afford some thing we need. We run out of food quickly." Id. at 4. The plaintiff has demonstrated that she cannot pay the \$405 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 Nietzke 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

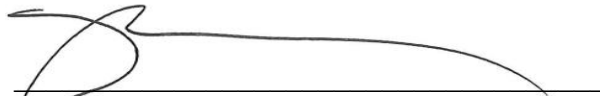
legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff's complaint indicates that she was denied benefits by the Commissioner for lack of disability, that she is disabled and that the conclusions and findings of fact of the defendant when denying benefits are not supported by substantial evidence and are contrary to law and regulation. Dkt. No. 1 at 1-2. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in 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 proceed without prepaying the filing fee. Dkt. No. 2.

Dated in Milwaukee, Wisconsin this 3rd day of June, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge