

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL ROY HALEY,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

ORDER

10-cv-463-wmc

Plaintiff Michael Roy Haley has filed a civil complaint against Michael Astrue, Commissioner of Social Security. Plaintiff seeks to commence this lawsuit without prepayment of the filing fees and costs or providing security therefor, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency plaintiff has submitted, I find that he is unable to prepay the fees and costs of commencing this action or to give security therefor.

Under 42 U.S.C. § 405(g), this court has authority only to review a “final” decision of the Commissioner of Social Security denying a plaintiff’s application for social security disability benefits. Under the social security rules, a decision denying social security benefits does not become final unless the claimant has completed all the steps of the administrative process, including filing a request for review with the Appeals Council. When the Appeals Council denies review, the decision of the commissioner becomes “final.” At this point, an appeal to federal court is permissible. Plaintiff has not alleged in his complaint that he has completed all the steps of the administrative process and obtained a final decision from the commissioner.

Instead of dismissing the complaint on the ground that it fails to state a claim for which relief may be granted, I will give plaintiff an opportunity to submit more information that shows that he has obtained a final decision from the commissioner on an application for social security

benefits. The easiest way for plaintiff to do this would be to submit a copy of the letter from the Appeals Council denying his request for review, which plaintiff should have received if he completed the administrative process.

ORDER

IT IS ORDERED that

1. Plaintiff's request to proceed in forma pauperis is GRANTED.
2. Plaintiff may have until September 8, 2010 to file information showing that he has obtained a final decision from the commissioner on an application for social security benefits. If plaintiff fails to submit this information by September 8, 2010, the court may dismiss his lawsuit.

Entered this 18th day of August, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge