

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

STEPHEN UTTERBACK,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

ORDER

11-cv-126-wmc

Plaintiff Stephen Utterback has filed a civil suit pursuant to 42 U.S.C. § 405(g) for review of a final decision of the Commissioner of Social Security denying plaintiff's application for social security disability benefits. 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.

To determine whether a petitioner qualifies for indigent status, the court uses the following calculation: From petitioner and his spouse's annual gross income, the court subtracts \$3700 for each dependent, excluding the petitioner. If the balance is less than \$16,000, the petitioner may proceed without any prepayment of fees and costs; if the balance is greater than \$16,000 but less than \$32,000, the petitioner must prepay half the fees and costs. Substantial assets or debts require individual consideration.

From petitioner's affidavit of indigency, I find that he and his wife have a monthly income of \$3,110.26 or an annual income of \$37,323.12. Subtracting \$3700 for two dependents, his wife and his step-daughter, their annual income is reduced to \$29,923.12. Petitioner does not have substantial debts or assets that require consideration. Therefore, petitioner he is able to prepay half the fees and costs of commencing this action in the amount of \$175.

Petitioner asserts that his wife and daughter are in China for three months and she will not be working. If I consider only petitioner's income, then he would have a monthly income of \$1810.26 or an annual income of \$21,723.12. However, he would not have any subtractions for the daily expenses of his dependents. Petitioner will still be able to pay \$175 to commence this action. Accordingly,

IT IS ORDERED that Stephen Utterback's petition for leave to proceed *in forma pauperis* is GRANTED on the condition that he pay half the filing fee, \$175. Plaintiff must pay the filing fee no later than March 24, 2011. If he fails to do so, this action may be dismissed for his failure to prosecute it. Upon receipt of plaintiff's payment, the clerk of court shall issue summonses and forward them to plaintiff's counsel for service.

Entered this 3rd day of March, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge