

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

---

TIMOTHY D. KELLEY,

Plaintiff,

ORDER

v.

06-C-0754-C

LINDA McMAHON,  
Acting Commissioner of Social Security,

Defendant.

---

This is an appeal of an adverse decision of the Commissioner of Social Security brought pursuant to 42 U.S.C. § 405(g). Plaintiff Timothy Kelley has requested leave to proceed in forma pauperis and has supported his request with an affidavit of indigency dated November 14, 2006 and a supplemental affidavit dated January 18, 2007.

The standard for determining whether plaintiff qualifies for indigent status is the following:

From plaintiff's annual gross income, the court subtracts \$2820 for each dependent excluding the plaintiff. If the balance is less than \$11,500, the plaintiff may proceed without any prepayment of fees and costs; if the balance is greater than \$11,500 but less than \$15,000, the plaintiff must prepay half the fees and costs; and if the balance is greater than \$15,000, the plaintiff must prepay all fees and costs. Substantial assets or debts require individual consideration.

Plaintiff does not have any dependents. He is married, but his wife is not employed. The couple's sole source of income is a monthly payment to plaintiff of \$1,511 from the Wisconsin Retirement System. Plaintiff and his wife own a home, but its equity is outweighed by mortgage debt. The monthly mortgage payments alone appear to equal the amount of plaintiff's income. In addition to the mortgage, plaintiff pays (or is supposed to pay) \$400 monthly towards utilities and \$250 to the federal government for what I presume to be back taxes. He and his wife spend \$700 monthly on food and medicine.

Although plaintiff's annual income of \$18,132 exceeds the threshold for pauper status, I conclude that he is entitled to proceed without prepayment of the filing fee or costs. Plaintiff's mortgage and back taxes constitute significant debts that warrant deviation from the court's standard formula.

Of unrelated note, Linda McMahon became Acting Commissioner of Social Security on January 22, 2007. Accordingly, the case caption has been changed to reflect the new defendant.

ORDER

Accordingly, IT IS ORDERED that Timothy Kelley's petition for leave to proceed in forma pauperis is GRANTED. The clerk of court shall prepare a summons and forward it with the complaint to the United States Marshal's Office for service upon defendant Commissioner in accordance with Rule 4 of Federal Rules of Civil Procedure.

Entered this 30<sup>th</sup> day of January, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge