

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

KEVIN SIMILA,

Plaintiff,

v.

LINDA MCMAHON,
Acting Commissioner of Social Security,

Defendant.

ORDER

07-C-0029-C

This is an appeal of an adverse decision of the Commissioner of Social Security brought pursuant to 42 U.S.C. § 405(g). (On January 22, 2007, Linda McMahon became Acting Commissioner of Social Security. I have changed the caption to reflect the change in defendant.) Plaintiff Kevin Simila has requested leave to proceed in forma pauperis and has supported his request with an affidavit of indigency dated December 12, 2006 and a supplemental affidavit dated February 5, 2007.

To determine whether a plaintiff qualifies for indigent status, the court uses the following calculation: From plaintiff's annual gross income, the court subtracts \$3400 for each dependent, excluding the plaintiff. If the balance is less than \$15,000, the plaintiff may proceed without any prepayment of fees and costs; if the balance is greater than \$15,000 but less than \$28,000, the plaintiff must prepay half the fees and costs; and if the balance is greater than \$28,000, the plaintiff must prepay all fees and costs. Substantial assets or debts require individual consideration.

Plaintiff has two dependents. He is married. Plaintiff's wife earns \$2,178 per month, or \$26,136 annually. Subtracting from that amount \$6,800 for the couple's dependents leaves a balance of \$19,336. Applying the formula above, plaintiff falls into the intermediate category where he must prepay half the fees and costs. I note that although plaintiff and his wife's monthly obligations appear to equal their monthly income, they do not have any unusually large debts or obligations. Accordingly, if he wishes to proceed with this action, plaintiff will have to pay half the filing fee, or \$175.

I will find plaintiff indigent for the purpose of serving his complaint. If plaintiff pays the filing fee, then the clerk shall forward the summons and complaint to the marshal for service in accordance with Fed. R. Civ. P. 4.

ORDER

IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis in this action is DENIED because plaintiff does not qualify for indigent status. However, plaintiff's income qualifies him for a reduction of the filing fee. Plaintiff is entitled to proceed upon payment of \$175. Further, plaintiff shall be considered indigent for the purposes of service.

Plaintiff may have until March 16, 2007, in which to pay the \$175 fee for filing his lawsuit. If, by March 16, 2007, plaintiff fails to pay the fee, the clerk of court is directed to enter judgment dismissing this case without prejudice for plaintiff's failure to prosecute it.

If plaintiff does pay the filing fee, then the clerk is directed to forward the summons and complaint to the marshal for service.

Entered this 20th day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge