

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Mercado v. Kijakazi

No. 22-CV-1713 (NLS) (S.D. Cal. Mar. 2, 2023) · No. 22-CV-1713 (NLS) · Decided March 2, 2023

SUMMARY

The United States District Court for the Southern District of California dismissed Juan Carlos Mercado’s pro se complaint seeking review of a Social Security benefits decision, granting leave to amend within 60 days. The court denied Mercado’s motion to proceed in forma pauperis because he had sufficient financial resources to pay the filing fee. The court also denied without prejudice his motion for appointment of counsel because he had not shown exceptional circumstances or efforts to obtain counsel.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Nita L. Stormes
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 2, 2023
DOCKET	22-CV-1713 (NLS)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a pro se action seeking judicial review of the Commissioner's denial of Social Security benefits and moved to proceed in forma pauperis and for appointment of counsel. The court screened the complaint sua sponte under 28 U.S.C. § 1915(e), dismissed it with leave to amend, denied IFP status, and denied the motion for appointment of counsel without prejudice.
STANDARD OF REVIEW	Mandatory sua sponte screening under 28 U.S.C. § 1915(e)(2)(B); the court accepts factual allegations as true for screening purposes and applies the pleading standard of Federal Rule of Civil Procedure 8(a) (2), including the requirement that allegations plausibly show entitlement to relief.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order

PARTIES

Juan Carlos Mercado v. Kilolo Kijakazi, Acting Commissioner of Social Security Administration

TOPICS

administrative law judicial review of agency action civil procedure motions to dismiss
exhaustion of remedies

PRACTICE AREAS

Social Security administrative law civil procedure in forma pauperis appointment of counsel

QUESTIONS PRESENTED

1. Whether the complaint adequately stated a claim for judicial review of the Commissioner's denial of Social Security benefits under the screening and pleading requirements of 28 U.S.C. § 1915(e) and Federal Rule of Civil Procedure 8(a)(2).
2. Whether Mercado demonstrated indigence sufficient to proceed in forma pauperis under 28 U.S.C. § 1915(a).
3. Whether Mercado demonstrated the diligence and exceptional circumstances necessary for appointment of counsel under 28 U.S.C. § 1915(e)(1).

HOLDINGS

1. A Social Security appeal complaint must identify the basis for disagreement with the Commissioner's decision and allege sufficient facts or legal grounds showing entitlement to relief; a conclusory assertion that the decision was wrong is insufficient. Mercado's complaint failed this requirement and was dismissed with leave to amend.
2. Mercado failed to demonstrate indigence sufficient to proceed in forma pauperis because his reported assets permitted payment of the filing fee with reasonable financial sacrifices. The motion for IFP status was denied.
3. Mercado was not entitled to appointed counsel because he did not show a reasonably diligent effort to obtain counsel or exceptional circumstances warranting appointment. The motion was denied without prejudice.

KEY QUOTATIONS

“A complaint appealing the Commissioner’s denial of disability benefits must set forth a brief statement of facts setting forth the reasons why the Commissioner’s decision was wrong.” (at 2)

“There is no absolute constitutional guarantee to counsel in civil cases.” (at 5)

FACTUAL BACKGROUND

Mercado sought review of the denial of his application for Social Security benefits. He alleged that, during his administrative hearing, the ALJ repeatedly said he would grant the claim because of Mercado's age and stipulations, but Mercado did not identify a substantive legal or factual error in the unfavorable decision. Mercado also sought IFP status, reporting no current income, approximately \$8,000 in checking and savings, approximately \$340,000 from the sale of his house, two dependents, and monthly expenses of approximately \$1,100. He requested appointment of counsel but supplied no information showing that he had attempted to obtain counsel.

PROCEDURAL HISTORY

Mercado filed a complaint challenging a Social Security administrative decision, along with motions for IFP status and appointment of counsel. The parties consented to magistrate judge jurisdiction. The court determined that the complaint did not state a legally sufficient basis for relief, that Mercado had not demonstrated indigence, and that he had not shown the diligence or exceptional circumstances required for appointed counsel.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Plaintiff was granted 60 days to file an amended complaint addressing the deficiencies and was required to pay the filing fee if he pursued the action by amended complaint.

CASES CITED

- *Lopez v. Smith*, 203 F.3d 1122, 1127, 1129 (9th Cir. 2000)
- *Hoagland v. Astrue*, No. 1:12cv00973-SMS, 2012 WL 2521753, at *1-*3 (E.D. Cal. June 28, 2012)
- *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (per curiam)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Montoya v. Colvin*, No. 16cv00454-RFB-NJK, 2016 WL 890922, at *2 (D. Nev. Mar. 8, 2016)
- *Graves v. Colvin*, No. 15cv106-RFB-NJK, 2015 WL 357121, at *2 (D. Nev. Jan. 26, 2015)
- *Cribbet v. Comm'r of Social Security*, No. 12cv1142-BAM, 2012 WL 5308044, at *3 (E.D. Cal. Oct. 29, 2012)
- *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948)
- *Escobedo v. Applebees*, 787 F.3d 1226, 1234-36 (9th Cir. 2015)
- *Cal. Men's Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), rev'd on other grounds, 506 U.S. 194 (1993)
- *Venable v. Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974)
- *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
- *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)
- *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984)

- *Alvarez v. Berryhill*, No. 18-cv-2133 W (BGS), 2018 WL 6265021, at *1 (S.D. Cal. Oct. 1, 2018)
- *Jaime B. v. Saul*, No. 19-CV-02431-JLB, 2020 WL 1169671, at *2 (S.D. Cal. Mar. 10, 2020)
- *Hedges v. Resolution Trust Corp.*, 32 F.3d 1360, 1363 (9th Cir. 1994)
- *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004)
- *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)
- *Harrington v. Scribner*, 785 F.3d 1299, 1309 (9th Cir. 2015)
- *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)
- *Bailey v. Lawford*, 835 F. Supp. 550, 552 (S.D. Cal. 1993)
- *Dupre v. City of San Diego*, No. 22CV169-JO-AGS, 2022 WL 3639288, at *1 (S.D. Cal. Aug. 23, 2022)
- *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009)

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