

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Davis-Lobo v. Commissioner of Social Security

Davis-Lobo · No. 3:25-cv-1421-CAB-AHG · Decided July 15, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 DANA DAVIS LOBO, Case No.: 3:25-cv-1421-CAB-AHG 12 Plaintiff,
ORDER DENYING PLAINTIFF’S MOTION FOR LEAVE TO 13 v. PROCEED IN FORMA
PAUPERIS 14 COMMISSIONER OF SOCIAL SECURITY, [Doc. No. 2] 15 Defendant. 16 17 18
19 20 On June 4, 2025, Plaintiff Dana Lobo brought this action against the Commissioner 21 of
Social Security, seeking judicial review of the Commissioner’s final administrative 22 decision
denying her application for Social Security Disability Benefits and Supplemental 23 Security
Income for lack of disability.

[See Doc. No. 1.] Along with her Complaint, 24 Plaintiff also filed a Motion for Leave to Proceed
in forma pauperis (“IFP”) under 28 25 U.S.C. § 1915. [Doc. No. 2.] 26 I. LEGAL STANDARD
27 A motion to proceed IFP presents two issues for the Court’s consideration.

First, the 28 Court must determine whether an applicant properly shows an inability to pay the 1
\$405 civil filing fee required by this Court. See 28 U.S.C. §§ 1914(a), 1915(a). To that 2 end, an
applicant must also provide the Court with a signed affidavit “that includes a 3 statement of all
assets[,] which shows inability to pay initial fees or give security.” CivLR 4 3.2(a).

Second, § 1915(e)(2)(B)(ii) requires the Court to evaluate whether an applicant’s 5 complaint
sufficiently states a claim upon which relief may be granted. See *Lopez v. Smith*, 6 203 F.3d 1122,
1127 (9th Cir. 2000) (“1915(e) not only permits but requires a district court 7 to dismiss an in
forma pauperis complaint that fails to state a claim.”). 8 II. DISCUSSION 9 A. Motion to Proceed
IFP 10 An applicant need not be completely destitute to proceed IFP, but he must adequately 11
prove their indigence.

Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339–40 12 (1948). An adequate affidavit
should “allege[] that the affiant cannot pay the court costs 13 and still afford the necessities of
life.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th 14 Cir. 2015) (citing *Adkins*, 335 U.S. at
339); see also *United States v. McQuade*, 647 F.2d 15 938, 940 (9th Cir.

1981) (an adequate affidavit should state supporting facts “with some 16 particularity, definiteness
and certainty”). No exact formula is “set forth by statute, 17 regulation, or case law to determine
when someone is poor enough to earn IFP status.” 18 *Escobedo*, 787 F.3d at 1235. Consequently,

courts must evaluate IFP requests on a case- 19 by-case basis. See *id.* at 1235–36 (declining to implement a general benchmark of “twenty 20 percent of monthly household income”); see also *Cal. Men’s Colony v. Rowland*, 939 F.2d 21 854, 858 (9th Cir.

1991) (requiring that district courts evaluate indigency based upon 22 available facts and by exercise of their “sound discretion”), *rev’d* on other grounds, 506 23 24 25 1 In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$55. See 28 U.S.C. § 1914(a); UNITED STATES COURTS, DISTRICT COURT 26 MISCELLANEOUS FEE SCHEDULE § 14 (effective Dec.

1, 2023), 27 <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>. The additional \$55 administrative fee does not apply to persons granted leave to proceed 28 1 U.S. 194 (1993); *Venable v. Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974). 2 Plaintiff states in her affidavit that she receives nearly \$1400 in monthly income, has 3 \$20,000 in savings, and lists no assets.

[Doc. No. 2 at 2–3.] Plaintiff represents that she is 4 responsible for supporting her son. [Doc. No. 2 at 3.] Plaintiff lists approximately \$1300 5 in expenses and claims that she receives food stamps. [Doc. No. 2 at 4.] Plaintiff appears 6 to have significant savings and positive net monthly income.

The Court finds that Plaintiff 7 has not sufficiently shown an inability to pay the \$405 filing fee under § 1915(a). 8 B. Screening under 28 U.S.C. 1915(e) 9 As discussed above, every complaint filed pursuant to the IFP provisions of 28 10 U.S.C. § 1915 is subject to a mandatory screening by the Court under Section 11 1915(e)(2)(B). *Lopez*, 203 F.3d at 1127.

Under that sub-provision, the Court must dismiss 12 complaints that are frivolous or malicious, fail to state a claim on which relief may be 13 granted, or seek monetary relief from defendants who are immune from such relief. See 14 28 U.S.C. § 1915(e)(2)(B). Social Security appeals are not exempt from this screening 15 requirement. See *Hoagland v. Astrue*, No. 1:12-cv-00973-SMS, 2012 WL 2521753, at *1 16 (E.D.

Cal. June 28, 2012) (“Screening is required even if the plaintiff pursues an appeal of 17 right, such as an appeal of the Commissioner’s denial of social security disability benefits 18 [under 42 U.S.C. 405(g)].”); see also *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) 19 (affirming that “the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners”); 20 *Lopez*, 203 F.3d at 1129.

21 Rule 2 of the Federal Rules of Civil Procedure’s Supplemental Rules of Social 22 Security Actions sets forth the requirements for a complaint in an action appealing the 23 decision of the Commissioner. FED. R. CIV. P., SUPPLEMENTAL R. 2 OF SOC. SEC. ACTIONS 24 UNDER 42 U.S.C. § 405(G) (effective Dec. 1, 2022) (The complaint must “(A) state that the 25 action is brought under § 405(g); (B) identify the final decision to be reviewed, including 26 any

identifying designation provided by the Commissioner with the final decision; (C) state the name and the county of residence of the person for whom benefits are claimed; (D) name the person on whose wage record benefits are claimed; and (E) state the type of benefits claimed.” The complaint may “include a short and plain statement of the grounds for relief.”).

In the IFP screening context, however, “[t]he plaintiff must provide a statement identifying the basis of the plaintiff’s disagreement with the ALJ’s determination and must make a showing that he is entitled to relief, ‘in sufficient detail such that the Court can understand the legal and/or factual issues in dispute so that it can meaningfully screen the complaint pursuant to § 1915(e).’” *Jaime B. v. Saul*, No. 19cv2431-JLB, 2020 WL 1169671, at *2 (S.D.

Cal. Mar. 10, 2020) (quoting *Graves v. Colvin*, No. 15cv106-RFB- 8 NJK, 2015 WL 357121, at *2 (D. Nev. Jan. 26, 2015)). “Every plaintiff appealing an adverse decision of the Commissioner believes that the Commissioner was wrong.

The purpose of the complaint is to briefly and plainly allege facts supporting the legal conclusion that the Commissioner’s decision was wrong.” *Hoagland*, 2012 WL 2521753, 12 at *2. Having reviewed Plaintiff’s Complaint, the Court finds Plaintiff has sufficiently stated a claim upon which relief may be granted. Specifically, in her complaint, Plaintiff (1) states that she brings this action pursuant to 42 U.S.C. § 405(g); (2) identifies the final decision of the Commissioner to be reviewed as the Appeals Council’s May 5, 2025, denial of Plaintiff’s request for review of the Administrative Law Judge’s (“ALJ”) unfavorable decision, (3) provides her name, the last four digits of her social security number, and states that she resides in Oceanside, California, located within San Diego County; and (4) states the type of benefits claimed, namely, Social Security Disability and Supplemental Security Income benefits.

[See Doc. No. 1.] Although it is optional to do so under Rule 2, Plaintiff further explains her grounds for relief from the Commissioner’s decision, including that: “the conclusions and findings of fact of the defendant are not supported by substantial evidence and are contrary to law and regulation.” [Id. at 2.] Upon due consideration, the Court finds that Plaintiff’s complaint survives screening under 28 U.S.C. § 1915(e)(2)(B).

26 /// 27 /// 28 /// 1 III. CONCLUSION 2 Based on the foregoing considerations, the Court DENIES Plaintiff’s Motion to 3 Proceed In Forma Pauperis, without prepayment of fees or costs. [Doc. No. 2.] Plaintiff 4 must pay the \$405.00 filing fee within 14 days from the date of this Order. If Plaintiff fails 5 to pay the filing fee or file a renewed IFP motion by this deadline, the Court will sua sponte 6 dismiss this action without prejudice.

7 In accordance with Rule 3 of the Federal Rules of Civil Procedure’s Supplemental 8 Rules of Social Security Actions, and this district’s General Order 747, a notice of 9 electronic filing shall

be transmitted to the Social Security Administration's Office of 10 General Counsel and to the United States Attorney's Southern District of California office 11 in lieu of service of a summons.

See FED. R. CIV. P., SUPPLEMENTAL R. 3 OF SOC. SEC. 12 ACTIONS UNDER 42 U.S.C. § 405(G) (effective Dec. 1, 2022) ("The court must notify the 13 Commissioner of the commencement of the action by transmitting a Notice of Electronic 14 Filing to the appropriate office within the Social Security Administration's Office of 15 General Counsel and to the United States Attorney for the district where the action is filed.

16... The plaintiff need not serve a summons and complaint under Civil Rule 4."); General 17 Order No. 747 (S.D. Cal. Dec. 15, 2022) (explaining that, in social security cases, the 18 administrative record is due in lieu of an answer "60[] days after service of the Notice of 19 Electronic Filing of the complaint," emphasizing that the service of summons is no longer 20 a requirement).

21 /// 22 /// 23 /// 24 25 26 27 28 1 If the filing fee is paid, no further action relating to service is needed, as the Clerk's 2 || Office already transmitted the notice of electronic filing to Defendant in the instant case. 3 || [See Doc. No. 3, NEF ("The Notice of Electronic Filing of the complaint sent by the court 4 ||to the Commissioner suffices for service of the complaint.

The Plaintiff need not serve a 5 ||summons and complaint under Civil Rule 4.")]. 6 7 IT IS SO ORDERED. 8 9 Dated: July 15, 2025 € ZL 10 Hon. Cathy Ann Bencivengo 1 United States District Judge 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28