

In the United States Court of Federal Claims

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DAVID F. SPENCER,	*
Plaintiff,	*
v.	*
UNITED STATES,	*
Defendant.	*

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No. 05-511T
Filed: July 28, 2005

ORDER

On May 2, 2005, the plaintiff, acting pro se, filed a claim for an income tax refund along with an application to proceed in forma pauperis. In order to provide access to this court to those who cannot pay the filing fees mandated by Rule 77.1(c) of the Rules of the United States Court of Federal Claims (RCFC), 28 U.S.C. § 1915 (2000) permits a court of the United States to allow a plaintiff to file a complaint without payment of fees or security, under specific circumstances. Section 1915 states that:

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

28 U.S.C. § 1915(a) (2000).

Access to the courts is fundamental to our system of justice. The purpose of 28 U.S.C. § 1915 is to provide meaningful access, not a barrier, to the indigent seeking relief in federal court since poverty should not make it impossible for a plaintiff to file a legitimate lawsuit. See Adkins v. E.I. Dupont de Nemours Co., 335 U.S. 331, 339 (1948) (finding that one need not “contribute to payment of costs, the last dollar they have or can get,” in order to benefit from

section 1915); see also In re Oliver, 682 F.2d 443, 446 (3d Cir. 1982) (finding that a court must protect the right of indigent persons to have access to the court system); Abdul-Akbar v. Dep't of Corrections, 910 F. Supp. 986, 998 (D. Del. 1995); Harlem River Consumers Coop., Inc. v. Associated Grocers of Harlem, Inc., 71 F.R.D. 93, 96 (S.D.N.Y. 1976).

A number of courts have reviewed the words of 28 U.S.C. § 1915(a)(1), regarding in forma pauperis applications by non-prisoner litigants in federal courts, and have concluded that Congress did not intend for non-prisoners to be barred from being able to proceed in forma pauperis in federal court. See Floyd v. United States Postal Serv., 105 F.3d 264, 275-76 (6th Cir.), reh'g denied (1997); Schagene v. United States, 37 Fed. Cl. 661, 663 (1997) (finding that it was not the intent of Congress to eliminate the in forma pauperis right of access to federal courts of eligible, indigent, non-prisoners); see also In re Prison Litigation Reform Act, 105 F.3d 1131, 1134 (6th Cir. 1997) (discussing how to administer in forma pauperis rights to a non-prisoner, thereby acknowledging the rights of non-prisoners to apply for in forma pauperis status); Leonard v. Lacy, 88 F.3d 181, 183 (2d Cir. 1996) (using “sic” following the word “prisoner” in 28 U.S.C. § 1915(a)(1) to indicate that the use of that word was inappropriate); Powell v. Hoover, 956 F. Supp. 564, 566 (1997) (holding that a “fair reading of the entire section [28 U.S.C. § 1915(a)(1)] is that it is not limited to prisoner suits.”). Moreover, 28 U.S.C. § 1915(a)(1) refers to both “person” and “prisoner.” The word “person” is used three times in the subsection, while the word “prisoner” is used only once. This court, therefore, finds that the single use of the word “prisoner” in the language of 28 U.S.C. § 1915(a)(1) was not intended to eliminate a non-prisoner from proceeding in federal court in forma pauperis, provided that the civil litigant can demonstrate appropriate need. Any other interpretation is inconsistent with the statutory scheme of 28 U.S.C. § 1915.

Under section 1915(a), the court must decide whether a plaintiff seeking leave to proceed in forma pauperis is unable to pay the costs and fees associated with the lawsuit. See Deutsch v. United States, 67 F.3d 1080, 1085 n.5 (3d Cir. 1995); see also Crews v. United States, 38 Fed. Cl. 10, 14-15 (1997). Pursuant to 28 U.S.C. § 1915(a)(1), in order to qualify for in forma pauperis status, an applicant must file an affidavit, which includes a statement of all assets, a statement that the person is unable to pay such fees or provide security, the nature of the action, defense or appeal and must state the affiant's belief that he/she is entitled to redress.

The affidavit filed by Mr. Spencer complies with the filing requirements of the statute. The application to proceed in forma pauperis, therefore, must be reviewed by the court to decide whether the plaintiff has made a “sufficient showing of poverty.” Harlem River Consumers Coop., Inc. v. Associated Grocers of Harlem, Inc., 71 F.R.D. at 95; see Green v. Cotton Concentration Co., 294 F. Supp. 34, 36 (S.D. Tex. 1968) (finding that, “[t]he federal paupers statutes were enacted to make the federal courts accessible to those of modest means; they were not intended to authorize the court to give an indigent carte blanche.”); see also Xanthull v. Beto, 296 F. Supp. 129, 131 (S.D. Tex. 1969) (finding that in order to protect public funds, the discretion of federal judges should be subject to statutory standards and

limited to authorize in forma pauperis status solely “upon a showing of necessity,” and that the lawsuit is not frivolous).

In his application to proceed in forma pauperis, the plaintiff states that he does not possess any funds held in “cash, money in checking, savings or other accounts,” and that he owns no real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing). Moreover, the applicant also states that he owns no real estate, stocks, bonds, notes, automobiles, or other valuable property. The applicant states that he receives \$1736.28 as net salary per month from his employer. He also has two children dependent upon him for support for \$300.00 a month each, for a total of \$600.00 monthly payments to his children. The plaintiff also has taken a loan on his 401K for a total of \$920.00. The plaintiff indicates on his application, however, that he has received funds from a pension, annuity, or life insurance payment within the past twelve months, but does not indicate the amount.

Under the statute, the court shall not “authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security,” unless a proper in forma pauperis application, satisfying the requirements of 28 U.S.C. § 1915(a)(1), has been filed. Given the facts presented, particularly Mr. Spencer’s indication that he receives a pension, annuity and/or life insurance payment, the court is unable to grant the application filed by Mr. Spencer for in forma pauperis status at this time. Accordingly, upon consideration of the financial information provided, and to maintain the integrity of the indigency request process, the plaintiff’s application to proceed in forma pauperis, filed in the above-captioned case on May 2, 2005, is **DENIED**. Plaintiff, therefore, shall submit to the clerk’s office the \$250.00 fee for filing a civil action, by check or money order, on or before **Thursday, August 18, 2005**, or the above-captioned case shall be dismissed. Alternatively, plaintiff may file a motion for reconsideration of this order with the court on or before **Thursday, August 18, 2005**, with more complete income information.

IT IS SO ORDERED.

MARIAN BLANK HORN
Judge

