

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

GARY D. BRADY,

Plaintiff,

vs.

**Civil Action No. 2:07 CV 17
(Maxwell)**

**COMMISSIONER OF
SOCIAL SECURITY,**

Defendant.

ORDER

It will be recalled that the above-styled Social Security action is referred to United States Magistrate Judge James E. Seibert pursuant to 28 U.S.C. § 636(b)(1)(B); Rule 72 of the Federal Rules of Civil Procedure; and Rule 7.02(c) of the Local Rules of Civil Procedure.

On March 14, 2007, Magistrate Judge Seibert filed a Report And Recommendation (Docket No. 4) wherein he recommended that the Plaintiff's Application For Leave To Proceed *In Forma Pauperis* be denied. Specifically, Magistrate Judge Seibert found that, because the Plaintiff receives approximately \$1,128.00 in Social Security benefits each month and has no dependents, he can afford to pay the Court's filing fee.

Magistrate Judge Seibert's Report And Recommendation directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e) of the Federal Rules of Civil Procedure, to file any written objections thereto with the Clerk of Court within ten (10)

days after being served with a copy of said Report And Recommendation. Magistrate Judge Seibert's Report And Recommendation expressly provided that a failure to timely file objections would result in waiver of the right to appeal from a judgment of this Court based thereon.

The docket in the above-styled civil action reflects that the Plaintiff's Objection To Report And Recommendation Denying Motion To Proceed *In Forma Pauperis* was filed on March 20, 2007. Attached to the Plaintiff's Objection is an outline of his monthly expenses which demonstrates that, while the Plaintiff does receive \$1,128.00 per month in Social Security disability benefits, he expends approximately \$1,117.00 a month for basic monthly expenses. In this regard, the Plaintiff asserts that his monthly expenditures are not for frivolous items but for basic utilities and housing requirements.

The Court has carefully reviewed the Plaintiff's Objection To Report And Recommendation Denying Motion To Proceed *In Forma Pauperis*. As noted by counsel for the Plaintiff, the Magistrate Judge made his determination that the Plaintiff was able to pay the Court's filing fee in this matter without having had the benefit of an outline of the Plaintiff's monthly expenses. Based upon its review of the outline of the Plaintiff's monthly expenses that was attached to the Plaintiff's Objection, the Court agrees with the Plaintiff that his monthly expenditures are not frivolous and that he is not able to pay the Court's filing fee. Accordingly, the Court, based upon an independent *de novo* consideration of all matters now before it, is of the opinion that the Plaintiff's Application For Leave To Proceed *In Forma Pauperis* should be granted.

For the foregoing reasons, it is

ORDERED that Magistrate Judge Seibert's Report And Recommendation Recommending Application For Leave To Proceed *In Forma Pauperis* Be Denied

(Docket No. 4) be, and is hereby, **REJECTED**. It is further

ORDERED that the Plaintiff's Application For Leave To Proceed *In Forma Pauperis* (Docket No. 2) be, and the same is hereby, **GRANTED**.

The Clerk of Court is directed to transmit copies of this Order to counsel of record.

ENTER: August 20, 2007

/S/ Robert E. Maxwell
United States District Judge