

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID HUGHES, o/b/o
JOHN HUGHES

97 CV 5652

Plaintiff,

MEMORANDUM
AND
ORDER

-against-

JOHN J. CALLAHAN, ACTING COMMISSIONER,
SOCIAL SECURITY ADMINISTRATION,

Defendant.

DAVID HUGHES
95-23 107th Street
Ozone Park, New York 114th 6
plaintiff pro se.

ZACHARY W. CARTER, United States Attorney
Eastern District of New York
One Pierrepont Plaza
Brooklyn, New York 11201
for defendant.

NICKERSON, District Judge:

Plaintiff pro se brings this action on behalf of
his child seeking review of the final determination of
the Commissioner of the Social Security Administration
denying plaintiff's claim for Disability Insurance

elm

and/or Supplemental Security Income benefits.

Plaintiff renews his motion for appointment of counsel.

In the recently-decided case of Wegner v. Canastota Central School District, 1998 WL 310335 (2d Cir. 1998), the Second Circuit wrote that "in federal court a non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child." Wegner, 1998 WL 310335 *1 (quoting Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59, 61 (2d Cir. 1990). Accordingly, the Court must either appoint counsel for the child in this case, or dismiss the case without prejudice. See Wegner, 1998 WL 310335 *2.

Cooper v. A. Sargenti Co., 877 F.2d 170 (2d Cir. 1989), articulates the factors the court must consider before appointing counsel for an indigent litigant:

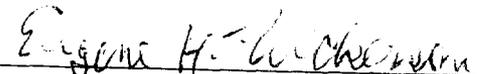
(1) whether the indigent's position seems likely to be of substance, (2) the indigent's ability to investigate the crucial facts, (3) whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder, (4) the

indigent's ability to present the case or obtain private counsel, (5) the complexity of the legal issues, (6) the availability of counsel, (7) and special reasons why appointment of counsel would be likely to lead to a more just determination.

The Court orders that the Clerk of Court appoint counsel for John D. Hughes in this case.

So ordered.

Dated: Brooklyn, New York
August 3, 1998


Eugene H. Nickerson, U.S.D.J.