

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KENNEY J. ERDMANN,

Plaintiff,

v.

CORRECTIONAL OFFICER II MORRISON,
CORRECTIONAL OFFICER II GRAY
and CORRECTIONAL OFFICER II KROCKER,

Defendants.

ORDER

11-cv-222-wmc

In an order entered on March 28, 2011, plaintiff Kenney Erdmann, a prisoner at Green Bay Correctional Institution in Green Bay, Wisconsin, was instructed to submit a certified copy of his six-month trust fund account statement so that an initial partial payment could be assessed in this case. Now before the court is a motion filed by plaintiff for an order directing prison officials to pay the entire \$350 filing fee from his release account. *See* dkt. 3. Plaintiff's motion will be denied.

Under the Prison Litigation Reform Act, an inmate who files a lawsuit in federal court under the *in forma pauperis* statute must pay the \$350 filing fee, first by making an initial partial payment and then by sending the remainder of the fee to the court in installments of 20% of the preceding month's income in accordance with 28 U.S.C. § 1915(b)(2). Although it is commendable that plaintiff is taking responsibility for paying his remaining balance promptly, he cannot use his release account funds in the manner he requests. The language in 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an *initial partial payment* if no other funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). However, with the exception of initial partial payments, federal courts lack the authority to tell state officials whether and to what extent a prisoner

should be able to withdraw money from his release account. Because plaintiff cannot use his release account funds to pay the remaining balance of the \$350 filing fee, I will deny his motion.

In his motion, plaintiff advises that if the court does not issue an order allowing plaintiff to use his release account to pay his the entire \$350 filing fee, then he does not wish to pursue this case. Plaintiff is reminded that according to the March 28th, 2011 order in this case, if he fails to provide a certified copy of his trust fund account statement for the period beginning September 14, 2010 and ending approximately March 14, 2011 by the April 19th deadline, then he is assumed to have voluntarily withdrawn this action. In that event, the clerk of court is directed to close this case without prejudice to plaintiff's filing his case at a later date.

ORDER

IT IS ORDERED that plaintiff Kenney Erdmann's motion for an order directing prison officials to pay the entire \$350 filing fee from his release account, dkt. #3, is DENIED.

Entered this 12th day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge