

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

JERRY MEANS,

Plaintiff,

v.

OPINION and ORDER

11-cv-235-bbc

DODGE CORRECTIONAL INSTITUTION,
JIM SCHWOCHERT, CARRIE KLIPFEL,
BROOKS FELDMAN, J. LUNGREN, JOHN DOE,
JOANNE BOVEE, KAREN GOURLIE, TOM GOZINSKE,
COLUMBIA CORRECTIONAL INSTITUTION,
GREGORY GRAMS, K. LLOYD, THOMAS MALONEY,
C. GRUCK, MARK MARSHALL, CONNIE CHAMPION,
AMY MILLARD, JOANNE LANE, MARY LEISER,
MILWAUKEE SECURE DETENTION FACILITY,
JOHN HUSZ, N. KOREMENOS, C. HUPEL, MS. NIMZ,
NEATHER PAULSEN, KELLY SALINAS,
NEW LISBON CORRECTIONAL INSTITUTION,
JANE DOE, LIZZE TESIS, CAPTAIN KANNENBERG,
MS. MARTIN, JEFF JAEGAR, C.O. KROOKS,
LYNN WASHETAS and C.O. BAYMER,

Defendants.

On March 30, 2011, plaintiff Jerry Means, a prisoner at the Wisconsin Secure Program Facility, filed a proposed complaint and supplement to the complaint alleging that he has been denied access to the courts and that prison staff has violated his Eighth Amendment rights by withholding needed psychotropic medications. He sought leave to proceed in forma pauperis despite the fact that he has struck out under 28 U.S.C. § 1915(g),

which means that he cannot obtain indigent status under § 1915 in any suit he files during the period of his incarceration unless he alleges facts in his complaint from which an inference may be drawn that he is in imminent danger of serious physical injury.

In a May 26, 2011 order, I concluded that plaintiff's access to the courts claim did not satisfy the imminent danger requirement, and it was unclear whether his Eighth Amendment claims satisfied the requirement because his allegations violated Fed. R. Civ. P. 8 by being too vague. I instructed plaintiff that if he wanted to pursue his access to courts claim he would have to submit a \$350 filing fee, and that if he wished to proceed on the Eighth Amendment claims, he would have to submit an amended complaint more clearly setting out his claims.

Plaintiff has now responded, filing an amended complaint containing more detailed allegations regarding both the access to courts and Eighth Amendment claims. However, he has not submitted a \$350 filing fee. As I explained to plaintiff in the May 26, 2011 order, this means that he cannot proceed on the access to courts claim because that claim does not satisfy the imminent danger requirement.

Moreover, now that plaintiff has more clearly set out his Eighth Amendment claims, it is clear that they do not qualify under the imminent danger standard either. Plaintiff alleges that in August 2010, while he was housed at the Columbia Correctional Institution, defendant Dr. Callister replaced plaintiff's medication for his bipolar disorder with a new medication that has severely painful side effects, and then upon transfer to the New Lisbon Correctional Institution in January 2011, defendant Dr. Reynolds took him off bipolar

medication completely.

Unfortunately for plaintiff, his amended complaint does not allege facts from which an inference can be drawn that he is *currently* in imminent danger of serious physical injury. Plaintiff is incarcerated at the Wisconsin Secure Program Facility, but he does not provide any information about the treatment he is receiving there. His claims involve the medical treatment that he received at two other Wisconsin prisons in the past, but the imminent danger exception does not apply to claims of past harm.

Because plaintiff is disqualified from proceeding in forma pauperis under § 1915(g), he may choose to pursue this case as a paying litigant. To do so, he must submit a check or money order made payable to the clerk of court in the amount of \$350 no later than August 8, 2011. If he does this, however, he should be aware that the court then will be required to screen his complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. If plaintiff does not make the \$350 payment by August 8, 2011, I will conclude that he does not want to pursue this action. In that event, the clerk of court is directed to close this file. However, even if this file is closed, plaintiff will still owe the remainder of the filing fee and he must pay it as soon as he has the means to do so. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997).

Alternatively, if plaintiff believes that his current medical care at the Wisconsin Secure Program Facility violates the Eighth Amendment, those claims may meet the imminent danger requirement. If he wishes to bring claims against medical staff at his

current prison, he should include those claims in a new lawsuit.

ORDER

IT IS ORDERED that

1. Plaintiff Jerry Means's request for leave to proceed in forma pauperis is DENIED because plaintiff is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g).

2. Plaintiff may have until August 8, 2011, in which to submit a check or money order made payable to the clerk of court in the amount of \$350. If, by August 8, 2011, plaintiff fails to pay the fee, the clerk of court is directed to close this file. However, even in that event, the clerk of court is to insure that plaintiff's obligation to pay the remainder of the filing fee is reflected in this court's financial records.

Entered this 18th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge