

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

DOUGLAS BALSEWICZ,

Plaintiff,

v.

GARY HAMBLIN, RANDALL HEPP,
TAMMY MAASSEN, DR. KENNETH ADLER,
SGT. CLARKK and SGT. HAGGLUND,

Defendants.

ORDER

12-cv-153-slc

In an order dated March 14, 2012, I assessed plaintiff Douglas Balsewicz an initial partial payment of the filing fee in the amount of \$298.60 and gave him until April 4, 2012, in which to make the payment. In the same order, I told plaintiff that if sufficient funds do not exist in his regular account, he should be allowed to use his release account to pay all or a part of the assessed amount. Now, plaintiff has filed a motion in which he asks the court to amend the March 14 order to allow him to use both his “release account” and his “release savings account” to pay the initial partial filing fee of \$298.60. In addition, plaintiff asks for an extension of time in which to submit the initial partial fee.

As this court has explained in previous cases, the language of 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), and the state of Wisconsin has conceded that this provision of the Prison Litigation Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner’s release account. Therefore, if sufficient funds do not exist in plaintiff’s regular account to pay his initial partial payment, he should be allowed to use his release account, including his release savings account, to pay the remainder of the assessed amount. To insure

that officials at the prison business office are aware of their responsibilities addressed in this order, I am sending a copy of this order to the warden of the Jackson Correctional Institution. Further, I will give plaintiff an extension of time until April 23, 2012 in which to pay the \$298.60 initial partial payment.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Douglas Balsewicz's motion to use his release savings account, dkt. 5, is GRANTED on the conditions that:

(A) sufficient funds do not exist in plaintiff's regular account; and

(B) sufficient funds do exist in plaintiff's release accounts;

and,

- (2) Plaintiff has until April 23, 2012, to submit a check or money order payable to the clerk of court in the amount of \$298.60. If, by April 23, 2012, plaintiff fails to make the initial partial payment, the clerk is directed to close this file without prejudice to plaintiff's filing his case at a later date.

Entered this 2nd day of April, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge