

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

DION MATHEWS and MUSTAFA-EL K.A. AJALA
formerly known as Dennis E. Jones-El,

Plaintiffs,

v.

RICK RAEMISCH, PETER HUIBREGTSE,
GARY BOUGHTON, JAMES GREER,
DAVID BURNETT, CYNTHIA THORPE,
LT. HANFELD, MARY MILLER,
KAMMY JONES and WISCONSIN
DEPARTMENT OF CORRECTIONS,

Defendants.

ORDER

10-cv-742-bbc

Plaintiffs Dion Mathews and Mustafa-El K.A. Ajala, both prisoners at the Wisconsin Secure Program Facility, in Boscobel, Wisconsin are proceeding *in forma pauperis* on appeal in this lawsuit. Now before the court is plaintiffs' motion for an order directing prison officials to pay the remaining balance of the appellate filing fees from their release accounts. *See* dkt. 160. The request will be denied.

Under the Prison Litigation Reform Act, an inmate who files an appeal in federal court under the *in forma pauperis* statute must pay the \$455 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). On July 19, 2012, this court entered an order assessing plaintiff Mathews a \$139.95 initial partial payment of the appeal filing fee and assessing plaintiff Ajala an initial partial payment of the appeal filing fee in the amount of \$18.99. The court received partial payments on August 1, 2012.

Although it is commendable that plaintiffs are taking responsibility for paying their remaining balance promptly, they cannot use their release account funds in the manner in which they request. 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 plaintiffs cannot use their release account funds to pay the remaining balance of the appeal filing fees, I will deny the motion.

ORDER

IT IS ORDERED that plaintiffs Dion Mathews and Mustafa-El K.A. Ajala's motion for an order directing prison officials to pay the remainder of the appellate filing fees from their release accounts, dkt. #160, is DENIED.

Entered this 12th day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge