

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

DAVID M. WILSON,

Plaintiff,

v.

DR. PAUL SUMNIGHT, MICHAEL THURMEN,
DR. BURTON COX, MARY MILLER,
PETER HUIBREGTSE and RICK RAEMISCH,

Defendants.

ORDER

10-cv-789-slc

Plaintiff, a prisoner at the Wisconsin Secure Program Facility, in Boscobel, Wisconsin is proceeding *in forma pauperis* in this lawsuit. Now before the court is plaintiff's motion for an order directing prison officials to pay the remaining balance of his filing fee from his release account. *See* dkt. 6. 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). On December 17, 2010, this court entered an order assessing plaintiff a \$105.63 initial partial payment of the filing fee in this case, which plaintiff paid on January 3, 2011.

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.

ORDER

IT IS ORDERED that plaintiff David Wilson's motion for an order directing prison officials to pay the remainder of his filing fee from his release account, dkt. #6, is DENIED.

Entered this 12th day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge