

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02816-CMA-MJW

DERRICK E. TURNER,

Plaintiff,

v.

KEVIN MILYARD, Warden,  
PHYSICIAN'S HEALTH PARTNERS,  
BEVERLY DOWIS, and  
ANTHONY A. DeCESARO,

Defendants.

---

**ORDER DISMISSING THE CASE  
FOR FAILING TO PAY FILING FEE**

---

The *pro se* incarcerated Plaintiff was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 without payment of an initial partial filing fee. (Docket No.

7). The Order states, in part, the following:

[t]he Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 is granted. Plaintiff shall be required to pay the full amount of the required \$350.00 filing fee pursuant to § 1915(b)(1) regardless of the outcome of this actions. It is

...

FURTHER ORDERED that, after payment of the initial partial filing fee, the plaintiff shall be required to make monthly payments of twenty percent (20%) of the preceding month's income credited to his trust fund account or to show cause each month as directed above why he has no assets and no means by which to make the monthly payment. Plaintiff is directed to make the necessary arrangements to have each monthly payment identified by the civil action number on this order. It is

FURTHER ORDERED that if within the time allowed plaintiff fails to have the designated initial partial filing fee or monthly payments sent to the clerk of the court or to show cause as directed above why he has no assets and no means by which to pay the designated initial partial filing fee or make the monthly payments, the Prisoner Complaint will be dismissed without further notice. It is

. . .

FURTHER ORDERED that the court may dismiss this action and may apply all or part of the filing fee payments tendered in this action to satisfy any filing fee debt the plaintiff may owe in a prior action or actions if the plaintiff fails to stay current with his payment obligations in the prior action or actions. . . .

(Docket No. 7, Order Granting Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed on December 28, 2009) (emphasis in bold in original).

Despite the clear directives of that Order, Plaintiff has made only one monthly payment of twenty percent (20%) of the preceding month's income credited to his trust fund account (Doc. # 8, payment received February 1, 2010). He has not made any payments since February 1, 2010, nor has he shown cause each month why he has no assets and no means by which to make the monthly payment.

Section 1915(b)(2), 28 U.S.C., requires that a prisoner "make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account," provided the prisoner's account exceeds \$10.00. This provision requires the prisoner to make the payment at the time his account is credited, before the prisoner engages in other, discretionary spending of that income. Harris v. Colorado Dept. of Corrections, 2000 WL 33193816, at \*1 (D. Colo. Dec. 19, 2000). The prisoner cannot voluntarily spend his income and then claim that he is without assets to satisfy his federal court

filing fee obligations. Such a rule would invite prisoners to fritter away their monthly income rather than pay the filing fees they have incurred.

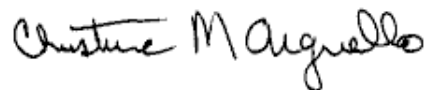
Therefore, in an Order to Show Cause issued on July 30, 2010 (Doc. # 29) the Plaintiff was directed that on or before August 20, 2010 he must either make the required monthly payments or show cause why he cannot. The Plaintiff was warned that failure to do so will result in this action be dismissed. (Docket No. 29). Plaintiff's copy of that Order to Show Cause was not returned to the court as undeliverable. Plaintiff has not filed a response to the Order to Show Cause, nor has he made any of the requisite payments toward the filing fee. It is therefore

ORDERED that for the foregoing reasons, that this action is DISMISSED based upon Plaintiff's failure to comply with court orders directing him to make monthly payments toward his filing fee or show cause each month why he cannot. It is

FURTHER ORDERED that the Motions to Dismiss (Doc. ## 23 and 25) are denied as moot.

DATED: September 1, 2010.

BY THE COURT:



---

CHRISTINE M. ARGUELLO  
United States District Judge