

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

Civil Action No. 10-cv-02470-BNB

FEB 16 2011

ARETHA MYLES MARTIN,

GREGORY C. LANGHAM  
CLERK

Plaintiff,

v.

RON MURRAY,  
TAMI ANDING,  
REBECCA HUTCHESON, and  
ANTHONY DeCESARO,

Defendants.

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ORDER OF DISMISSAL

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Plaintiff, Aretha Myles Martin, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Denver Women's Correctional Facility in Denver, Colorado. Ms. Martin, acting *pro se*, initiated this action by filing a Prisoner Complaint. On October 12, 2010, Ms. Martin was granted leave to proceed pursuant to 28 U.S.C. § 1915. Pursuant to § 1915(b)(1), Ms. Martin was ordered to pay the \$350.00 filing fee, and she was directed to pay the filing fee in installments. On November 8, 2010, Ms. Martin paid an initial partial filing fee of \$12.00.

Pursuant to § 1915(b)(2), Ms. Martin is "required to make monthly payments of 20 percent of the preceding month's income credited to [her] account" until the filing fee is paid in full. In the Court's October 12 Order, Ms. Martin was instructed either to make the required monthly payments or to show cause each month why she has no assets and no means by which to make the monthly payment. In order to show cause, Ms.

Martin was directed to file a current certified copy of her inmate trust fund account statement. Ms. Martin was warned that a failure to comply with the requirements of § 1915(b)(2) would result in the dismissal of this action.

Ms. Martin submitted a certified account statement on December 9, 2010. The statement indicates that she had a current balance of \$54.65 in her account, but she failed to submit a monthly payment. Therefore, Ms. Martin was ordered to show cause why this action should not be dismissed for failure to comply with the Court's October 12 Order and the requirements of § 1915(b)(2). On December 27, 2010, Ms. Martin submitted a Letter to the Court, in which she appears to argue that she only had \$22.08 available, rather than \$54.65, and she needed to purchase hygiene items.

Pursuant to § 1915(b)(2), a monthly payment from a prisoner's account is due to the Court each time the amount in the account exceeds \$10.00; the monthly payment is equal to twenty percent of the preceding month's income credited to the prisoner's account. In November, deposits in Ms. Martin's account equaled \$47.60. The payment due for December would be approximately \$9.50. Even considering Ms. Martin's argument that she needed to purchase hygiene items, she had a balance of \$22.96 on December 3, 2010, and over the past five months she had received on average \$36.00 per month in state pay. Furthermore, the statement Ms. Martin submitted does not include her state pay for December.

Pursuant to § 1915, Ms. Martin is **obligated** to pay the \$350.00 filing fee in full by submitting monthly payments thereafter when sufficient funds are available in her trust fund account. **See** 28 U.S.C. § 1915(b)(1) and (2) (emphasis added). The Court finds that Ms. Martin had sufficient money in her account and has failed to comply with

the requirements under § 1915. Ms. Martin's argument that she sent proper documentation to the Court showing that she is unable to pay the monthly fee is without basis. The action, therefore, will be dismissed without prejudice for failure to comply with § 1915 and the Court's order.

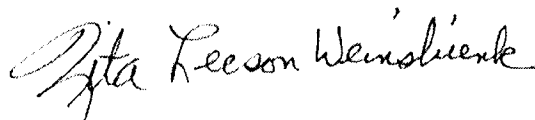
The Court also notes that on January 14, 2011, Ms. Martin submitted an account statement that indicated she had an available balance of \$18.28 in her account as of January 7, 2011. Again, Ms. Martin had sufficient money in her account and has failed to comply with the requirements under § 1915. Accordingly, it is

ORDERED that the Complaint and action are dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to submit a monthly payment and comply with the October 12, 2010 Order. It is

FURTHER ORDERED that Motion to File Without Payment of Filing fee (Doc. No. 17) filed on January 14, 2011, is denied as improper and moot.

DATED at Denver, Colorado, this 15th day of February, 2011.

BY THE COURT:



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ZITA LEESON WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO


**CERTIFICATE OF MAILING**

Civil Action No. 10-cv-02470-BNB

Aretha Myles Martin  
Prisoner No. 90897  
Denver Women's Corr. Facility  
PO Box 392005  
Denver, CO 80239

I hereby certify that I have mailed a copy of the **ORDER and JUDGMENT** to the above-named individuals on February 16, 2011.

GREGORY C. LANGHAM, CLERK

By:  \_\_\_\_\_  
Deputy Clerk