

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

SHAD HAMMOND,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:13-cv-418-GPM-DGW
)	
C/O JAMES, et al.,)	
)	
Defendants.)	

ORDER

WILKERSON, Magistrate Judge:

Now pending before the Court are the Motion to Waive Initial Partial Filing Fee (Doc. 45) and the Motion to Show Cause/Allow Action to Proceed (Doc. 47) filed by Plaintiff, Shad Hammond, on November 7, 2013 and November 15, 2013, respectively. Both Motions are **DENIED without prejudice.**

On May 21, 2013, District Judge G. Patrick Murphy ordered Plaintiff to pay an initial filing fee of \$16.05 (Doc. 10). That amount was based on the Motion to Proceed in forma pauperis filed by Plaintiff on April 30, 2013 (Doc. 2) and the Trust Fund Account Statement filed on May 13, 2013 (Doc. 8) which showed a balance of \$54.75 as of April 25, 2013. Title 28 U.S.C. § 1915, which allows a party to proceed without the *prepayment* of the entire \$350.00 filing fee. However, Plaintiff is still obligated to pay the filing fee and was assessed an initial partial filing fee consistent with 28 U.S.C. § 1915(b)(1). In light of Judge Murphy's Order, it was clear that on April 25, 2013, Plaintiff was capable of paying the initial filing fee. That Plaintiff chose to spend those monies on things other than the assessed initial filing fee has no bearing on whether that amount was due and owing. *See Lumbert v. Illinois Dep't of Corrections*, 827 F.2d 257 (7th Cir. 1987); *See also Lucien v. DeTella*, 141 F.3d 773 (7th Cir. 1998). Plaintiff's "current poverty"

does not authorize continuation of this suit “if he had the resources to comply with the statute at the time the Act called for payment” nor does it excuse the failure to comply with this Court’s orders. *Robbins v. Switzer*, 104 F.3d 895, 898 (7th Cir. 1997). Lest it be unclear, the obligation to pay the initial filing fee rests with the Plaintiff, not the institution where he is housed. Plaintiff is again reminded that he must pay the \$16.05 filing fee or show cause by January 6, 2014, or risk dismissal, without prejudice, of this lawsuit as outlined in the November 5, 2013 Order (Doc. 44).

If Plaintiff elects to show cause why he should not be required to pay the initial filing fee, he shall attach a current inmate trust fund account statement to his response for the time period of April 25, 2013 to the present and articulate in what manner he elected to spend the \$54.75 that was in his account on April 25, 2013.

IT IS SO ORDERED.

DATED: November 11, 2013



DONALD G. WILKERSON
United States Magistrate Judge