

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

STEVEN N. KENDALL,	)	
Plaintiff,	)	
	)	Civ. Action No. 18-10141-PBS
v.	)	
	)	
DOCTOR MURRAY, et al.,	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

January 26, 2018

SARIS, C.D.J.

On January 24, 2018, Steven Kendall ("Kendall"), who is confined at FMC Devens and proceeding pro se, filed a letter (Docket No. 1), a proposed Order to Show Cause with Exhibits (Docket No. 2) and a document captioned as a "Memorandum of Law in Support of Plaintiff's Motion for Preliminary Injunction" and Affidavit (Docket No 3).

Kendall asserts that he is in imminent danger because, among other things, his "K-pouch" is damaged and causes a condition of "leaking and bleeding bowel," his prosthetic is damaged and causes excruciating pain when trying to walk, he is denied use of a handicapped accessible cell, and he is being denied required surgery. Kendall has begun the grievance process and contends that he will suffer permanent injury if he has to wait to complete the grievance process.

The Court will treat Kendall's letter (Docket No. 1) and Affidavit (Docket No. 3-1) as a complaint and request for

preliminary relief. The Court will treat Kendall's proposed order to show cause and exhibits (Docket Nos. 2-1, 2-2) as a motion for preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

Because Kendall has not paid the filing fee nor filed a motion to proceed in forma pauperis, he will be provisionally granted leave to proceed in forma pauperis because of his medical condition, and he will be granted additional time to file such motion accompanied by a copy of his prison trust account statement.<sup>1</sup> The Clerk will be directed to issue summons for service and the defendants shall have seven business days to respond to the request for injunctive relief.

#### **ORDER**

Based on the foregoing, it is hereby Ordered that:

1. The Court will treat Kendall's letter (Docket No. 1) and Affidavit (Docket No. 3-1) as a complaint and request for preliminary relief. The Court will treat Kendall's proposed order to show cause and exhibits (Docket Nos. 2-1, 2-2) as a motion for preliminary injunction.

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<sup>1</sup>Unlike other civil litigants, prisoner plaintiffs are not entitled to a complete waiver of the filing fee, notwithstanding the granting of in forma pauperis status. Based on the information contained in the prison account statement, the Court will direct the appropriate prison official to withdraw an initial partial payment from the plaintiff's account, followed by payments on a monthly basis until the filing fee is paid in full. See 28 U.S.C. § 1915(b)(1)-(2). Even if the action is dismissed upon a preliminary screening, see id. §§ 1915(e)(2), 1915A, the plaintiff remains obligated to pay the fee, see McGore v. Wrigglesworth, 114 F.3d 601, 607 (6th Cir. 1997) (§ 1915(b)(1) compels the payment of the fee at the moment the complaint is filed).

2. Plaintiff is provisionally granted leave to proceed in forma pauperis because of his medical condition. He must, within forty-two days of the date of this order, file an Application to Proceed in District Court without Prepaying Fees or Costs accompanied by a copy of his prison trust account statement. Failure to do so may result in dismissal of the action. The Clerk shall send a copy of this Memorandum and Order to plaintiff with a blank Application to Proceed in District Court without Prepaying Fees or Costs.
3. The Clerk shall issue summons and the United States Marshals Service shall complete service with all costs to be advanced by the United States.
4. The Clerk shall send copies of plaintiff's complaint and motion to legal counsel for FMC Devens, the Warden for FMC Devens and the Office of the United States Attorney for the District of Massachusetts. The defendants shall have seven business days to respond to the motion.

SO ORDERED.

/s/ Patti B. Saris  
PATTI B. SARIS  
CHIEF UNITED STATES DISTRICT JUDGE