

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DAVID MAURICE LYONS-BEY,

Plaintiff,

v.

WARDEN S. CAMPBELL,

Defendant.

Case No. 2:19-cv-11129

Honorable Laurie J. Michelson

Magistrate Judge Patricia T. Morris

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**OPINION AND ORDER OF SUMMARY DISMISSAL**

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I.

Plaintiff David Maurice Lyons-Bey is a Michigan prisoner who filed a *pro se* civil rights complaint on April 15, 2019. A short time later, Executive Magistrate Judge R. Steven Whalen issued an order of deficiency, which required Plaintiff to provide a “Prisoner’s Application to Proceed Without Prepayment of Fees and Costs and Authorization to Withdraw from the Trust Fund Account, a current Certification/Business Manager’s Account Statement, and a statement of Trust Fund Account (or institutional equivalent) for the six-month period immediately preceding the filing of the complaint.” (Docket No. 4.)

Alternatively, the order permitted Plaintiff to pay the four hundred (\$400.00) dollar filing fee in full. Plaintiff was given thirty days to comply with the order. The order warned Plaintiff that if he failed to pay the filing fee and the administrative fee, or failed to file the required documents, the Court would presume that he is not proceeding without prepayment of the fee, assess the entire fee, and order the case dismissed for want of prosecution. (*Id.*)

The thirty days have passed. Plaintiff has neither paid the filing fee in full nor supplied this Court with the requested information. For the reasons stated below, the complaint is **DISMISSED WITHOUT PREJUDICE**.

## II.

The Prisoner Litigation Reform Act of 1995 (PLRA) states that “if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1) (as amended); *In Re Prison Litigation Reform Act*, 105 F. 3d 1131, 1138 (6th Cir. 1997). The *in forma pauperis* statute provides prisoners the opportunity to make a down payment of a partial filing fee and pay the remainder in installments. 28 U.S.C. § 1915(b); *see also Miller v. Campbell*, 108 F. Supp. 2d 960, 962 (W.D. Tenn. 2000).

Under the PLRA, a prisoner may bring a civil action *in forma pauperis* if he files an affidavit of indigency and a certified copy of the trust fund account statement for the six-month period immediately preceding the filing of the complaint. *See* 28

U.S.C. § 1915(a). The affidavit must include “a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor[,]” and must also “state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1).

If the inmate does not pay the full filing fee and fails to provide the required documents, the district court must notify the prisoner of the deficiency and grant him thirty days to correct it or pay the full fee. *Davis v. United States*, 73 F. App’x 804, 805 (6th Cir. 2003) (citing *McGore v. Wigglesworth*, 114 F. 3d 601, 605 (6th Cir. 1997)). If the prisoner does not comply, the district court must presume that the prisoner is not a pauper, assess the inmate the full fee, and order the case dismissed for want of prosecution. *Id.* The moment Plaintiff filed his complaint, he became responsible for the filing fee and waived any objection to the withdrawal of funds from his trust fund account to pay court fees and costs. *McGore*, 114 F. 3d at 605.

Plaintiff has failed to apply to proceed *in forma pauperis* in the manner required by law and as explained in the April 25, 2019 Order of Deficiency. Plaintiff has neither provided the Court with the required application to proceed without prepayment of fees and costs nor paid the required fee. The Court thus dismisses the complaint without prejudice for want of prosecution. *See Erby v. Kula*, 113 F. App’x 74, 75–76 (6th Cir. 2004); *Davis*, 73 F. App’x at 805.

### III.

Accordingly, **IT IS ORDERED** that the complaint be **DISMISSED**  
**WITHOUT PREJUDICE.**

**SO ORDERED.**

s/Laurie J. Michelson  
LAURIE J. MICHELSON  
UNITED STATES DISTRICT JUDGE

Date: June 19, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel of record and/or pro se parties on this date, June 19, 2019, using the Electronic Court Filing system and/or first-class U.S. mail.

s/William Barkholz  
Case Manager