

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JAMES COTTON,

Plaintiff,

vs.

DOUGLAS COUNTY DEPARTMENT  
OF CORRECTIONS,  
DOUGLAS COUNTY, NEBRASKA,  
and JACQUELINE ESCH, in her  
official capacity as a medical doctor  
of Douglas County Corrections,

Defendants.

8:16CV153

ORDER

This matter is before the court on the plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Filing No. 6), which includes an affidavit regarding his financial status. Additionally, the plaintiff filed a Financial Account Statement for the period October 8, 2015, through April 14, 2016. **See** Filing No. 5. Upon review of these documents, the court finds the plaintiff is permitted to proceed IFP.

Nevertheless, prisoner plaintiffs are required to pay the full amount of the court's \$350.00 filing fee by making monthly payments to the court, even if the prisoner is proceeding IFP. 28 U.S.C. § 1915(b). The Prison Litigation Reform Act "makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997); *Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951 (D. Neb. 2001).

Pursuant to 28 U.S.C. § 1915(b)(1), the plaintiff must pay an initial partial filing fee in the amount of twenty percent of the greater of the plaintiff's average monthly account balance or average monthly deposits for the six months preceding the filing of the Complaint. Here, the court finds the initial partial filing fee is \$75.00, based on an average monthly account balance of \$375.00. The plaintiff must pay this initial partial filing fee within thirty days or his case will be subject to dismissal. If necessary, the plaintiff may file a motion requesting an extension of time.

In addition to the initial partial filing fee, the plaintiff must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). Therefore, after payment in full of the initial partial filing fee, the plaintiff’s institution must collect the remaining installments of the filing fee and forward the payments to the court.

Moreover, the plaintiff is advised he will remain responsible for the entire filing fee, as long as he is a prisoner, even if the case is dismissed at some later time. **See *In re Tyler***, 110 F.3d at 529-30; ***Jackson***, 173 F. Supp. 2d at 951.

**IT IS ORDERED:**

1. The plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs (Filing No. 6) is granted.
2. The plaintiff must pay an initial partial filing fee of \$75.00 within 30 days, unless the court extends the time in response to a written motion.
3. After payment of the initial partial filing fee, the plaintiff’s institution must collect the additional monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2), quoted above, and forward those payments to the court.
4. The clerk’s office is directed to send a copy of this order to the appropriate official at the plaintiff’s institution.

Dated this 11th day of May, 2016.

BY THE COURT:

s/ Thomas D. Thalken  
United States Magistrate Judge