

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ANTHONY P. PURDY,

Plaintiff,

vs.

COMMUNITY CORRECTION, et al.

Defendants.

8:21CV134

**MEMORANDUM
AND ORDER**

On May 14, 2021, the court ordered Plaintiff to show cause why this case should not be dismissed for failure to pay the initial partial filing fee. (See Filing 8.) Plaintiff has now responded with evidence showing that his request for payment of the 12-cent fee from his inmate account was denied for insufficient funds. (See Filing 11.) Based on this showing, the court will permit this case to proceed to initial review without payment of an initial partial filing fee.

When the prisoner is unable to pay the initial partial filing fee due to a lack of funds, the requirement that the initial partial filing fee will be paid at the outset of the case is suspended. *See Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951 n. 9 (D. Neb. 2001). Instead, “the whole of the . . . filing fees are to be collected and paid by the installment method contained in § 1915(b)(2).” *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). Plaintiff’s institution will be directed to collect and forward to the court monthly installment payments in the manner set forth in 28 U.S.C. § 1915(b)(2), until the entire \$350.00 filing fee is paid.¹

¹ “[T]he 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).

Plaintiff has also filed a motion to compel the prison librarian to produce copies of various documents. This motion will be denied. As detailed in General Order No. 2020-01 (Filing 3), absent special circumstances, no discovery can take place in this pro se civil case until after the court enters a progression order, and that will not happen unless the court determines from its review of the pleadings that the case should proceed to service of process.

IT IS THEREFORE ORDERED:

1. Plaintiff's motion to waive initial partial filing fee (Filing 11) is granted, as follows:
 - a. This matter will proceed to initial review without payment of an initial partial filing fee.
 - b. Effective immediately, Plaintiff's institution shall collect monthly payments from Plaintiff's account in the manner set forth in 28 U.S.C. § 1915(b)(2) and forward those payments to the clerk of the court.
2. The clerk's office is directed to send a copy of this order to the appropriate official at Plaintiff's institution.
3. Plaintiff is advised that the next step in this case will be for the court to conduct an initial review of Plaintiff's claims to determine whether summary dismissal is appropriate under 28 U.S.C. §§ 1915(e)(2) and 1915A. The court will conduct this initial review in its normal course of business.
4. Plaintiff's motion to compel (Filing 9) is denied without prejudice.

Dated this 7th day of June, 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge