IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EDWARD SEDLER,

Plaintiff,

vs. No. CV 18-00886 MV/GJF

BETTY JUDD, WARDEN,
ENTIRE CORE CIVIC STAFF,
CENTURION MEDICAL LLC,
NEW MEXICO DEPARTMENT OF CORRECTIONS,
GERMAN FRANCO, FNU LEYBA, and
BARRY BEAVINS,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the Prisoner's Civil Rights Complaint filed by Plaintiff Edward Sedler, on September 19, 2018. (Doc. 1). The Court dismisses this case without prejudice for failure to comply with statutes and Court Orders and failure to prosecute.

Plaintiff Edward Sedler filed this civil rights proceeding under 42 U.S.C. § 1983 on September 9, 2018. (Doc. 1). Plaintiff also filed a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. (Doc. 2). The Court granted Plaintiff Sedler leave to proceed under § 1915 on October 11, 2018, and based on the analysis required by 28 U.S.C. § 1915(b), imposed an initial partial payment of $14.57 (Doc.9). The October 11, 2018 Order directed Sedler to, within 30 days of entry of the Order, either pay the initial partial payment of $14.57 or demonstrate why he should be relieved of the obligation to make the payment. (Doc. 9).

More than 30 days elapsed after entry of the October 11, 2018 Order, and Plaintiff Sedler did not pay the initial partial payment or otherwise respond to the Order. Instead, Sedler filed a

second Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. (Doc. 12). The Second Prisoner's Motion and Affidavit contained less information than the original filing by Sedler and did not include the six-month inmate account statement required by § 1915(b). The Court entered an Order to Show Cause on January 11, 2019. (Doc. 16). The Order to Show Cause directed Plaintiff Sedler to show cause why the case should not be dismissed for his failure to make the initial partial payment required by 28 U.S.C. § 1915(b) and the Court's October 11, 2018 Order. (Doc. 16). More than 30 days have elapsed since entry of the January 11 Order to Show Cause and Plaintiff Sedler has not responded to the Order.

When a prisoner is granted leave to proceed *in forma pauperis*, § 1915 provides:

> "The court ***shall*** assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal."

28 U.S.C. § 1915(b)(1) (emphasis added). Plaintiff's six-month inmate account statement shows that Plaintiff had an account balance sufficient to pay the initial partial payment. (Doc. 2). *See Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997). Plaintiff Sedler has not paid the $14.57 initial partial payment or shown cause why he should be relieved of the obligation to pay.

The Court's October 11, 2018 and January 11, 2019 Orders both directed Plaintiff Sedler to make the required partial payment under § 1915(b)(1) or show cause why the payment should be excused. (Doc. 9, 16). Plaintiff Sedler has failed to make the initial partial payment and to comply with the Court's Orders. The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute or to comply with statutes, the rules of civil procedure, or court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003). The Court will dismiss this case for

Plaintiff's failure to comply with 28 U.S.C. § 1915(b) and the Court's October 11, 2018 and January 11, 2019 Orders and for failure to prosecute this proceeding.

IT IS ORDERED:

(1) the Second Prisoner's Motion and Affidavit for Leave to Proceed Under 28 U.S.C. § 1915 (Doc. 12) is **DENIED**; and

(2) the Prisoner Civil Rights Complaint filed by Plaintiff Edward Sedler on September 19, 2018. (Doc. 1) is **DISMISSED** without prejudice under Fed. R. Civ. P. 41(b) for failure to comply with 28 U.S.C. §§ 1914 and 1915, failure to comply with the Court's October 11, 2018 Order and January 11, 2019 Order to Show Cause, and failure to prosecute this case.

UNITED STATES DISTRICT JUDGE