

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

SEAN LLOYD,

Plaintiff,

vs.

No. CV 20-00289 MV/KRS

SANTA FE ADULT DETENTION CENTER,
et al.,

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court *sua sponte*. Plaintiff Sean Lloyd is an incarcerated prisoner. He filed a Civil Rights Complaint. (Doc. 1). Lloyd's Complaint was not in proper form and he did not submit an application to proceed under § 1915 or pay the filing fee for this case. On May 5, 2020, the Court ordered him to cure the deficiencies by submitting a complaint in proper form and either paying the filing fee or submitting an application to proceed *in forma pauperis*. (Doc. 3). Lloyd then submitted his Amended Complaint and an Application to Proceed Under 28 U.S.C. § 1915 (Doc. 4, 5). The Court granted the application to proceed *in forma pauperis* on July 15, 2020. (Doc. 7). The Court also required Plaintiff Lloyd to make an initial partial payment of \$10.00 or show cause why he should not be required to make the payment within 30 days of entry of the Order. (Doc. 7 at 2).

Lloyd responded that he had not received money from his family and was unable to pay the \$10.00 at the current time. (Doc. 8). The inmate account statement submitted with his application shows that Lloyd had an account balance sufficient to pay the initial partial payment, but spends his money on commissary purchases. (Doc. 5 at 3-4). *See Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997). “[W]hen a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the prison canteen or commissary, he

should not be excused for failing to pay the initial partial filing fee.” *Baker v. Suthers*, 9 F. App’x 947, 949 (10th Cir. 2001).

More than 30 days has elapsed since entry of the Order and Plaintiff Lloyd has not paid the \$10.00 initial partial payment or shown cause why he should be relieved of the obligation to pay.

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 Lloyd was ordered to make the required partial payment under § 1915(b)(1) or show cause why the payment should be excused but has failed to comply with the Court’s Order.

The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003). The Court will require Plaintiff Lloyd to show cause, within 30 days of entry of this Order, why this action should not be dismissed for non-compliance with the Court’s July 15, 2020 Order. Failure to show cause or otherwise respond to this Order may result in dismissal of this case without further notice.

IT IS ORDERED that Plaintiff Sean Lloyd show cause, within 30 days of entry of this Order, why this case should not be dismissed for failure to comply with the Court’s July 15, 2020 Order.



KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE