

FILED

JAN 23 2013

[Signature]
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

GERALD MILLER,)	Civ. 11-4176-LLP
)	
Plaintiff,)	
)	
vs.)	
)	
DOUGLAS WEBER, Warden,)	
South Dakota State Penitentiary;)	
ROBERT DOOLEY, Warden,)	AMENDED ORDER
Mike Durfee State Prison;)	
DR. WATT, contract doctor,)	
South Dakota Dept. of Corrections,)	
North Central Heart Institute;)	
DR. RAYMOND H. ALLEN,)	
contract doctor,)	
South Dakota Dept. of Corrections,)	
North Central Heart Institute,)	
in their individual and official capacities,)	
)	
Defendants.)	

The Court issued an order on May 29, 2012, granting Miller's motion to proceed in forma pauperis, but dismissing his § 1983 complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted. Docket 9. In calculating Miller's initial partial filing fee, the Court looked at Miller's average monthly balance for the six months preceding the filing of his § 1983 complaint, which at the time was \$105.86. Docket 5 at 1. Pursuant to 28 U.S.C. § 1915(b)(1), the court took twenty percent of that amount and determined that Miller owed an initial partial filing fee of \$21.17. Docket 9 at 4.

As indicated on the Prisoner Trust Account Report, frozen funds are included in the calculation of an inmates accounts and balances. Frozen funds, or frozen accounts, are separate

subaccounts in which the Department of Corrections “may place a designated amount of an inmate’s deposits and earnings” which are “to be saved until release.” ARSD 17:50:01:21. “The inmate may not draw from this frozen subaccount prior to release except with the approval of the warden.” *Id.* Nonetheless, the Court included the funds in Miller’s frozen subaccount when it calculated his initial partial filing fee. Docket 9 at 4.

Miller filed a Motion for Reconsideration on June 26, 2012, notifying the court that the average monthly balance used by the Court included \$100 in frozen funds—funds that are not available to Miller until his release from prison. Docket 10. Accordingly, Miller has requested that the Court recalculate his initial partial filing fee using the balance of his spending account, which represents the only funds Miller is free to access while imprisoned. *Id.* The Court has reconsidered its calculation of Miller’s initial filing fee, and it has determined that funds held in a frozen account should not be considered in determining whether to grant an inmate in forma pauperis status, nor should it be factored into the initial-partial-filing-fee calculation.

The South Dakota Department of Corrections (DOC) describes four types of accounts available to inmates: (1) commissary or spend accounts, which inmates may use to purchase personal items from the prison commissary; (2) disbursement accounts, which are used to pay child support, other court-ordered obligations (fines, fees, sanctions, and restitution), costs incurred while in the custody of the DOC, and/or costs of incarceration; (3) savings accounts, from which funds can be transferred to disbursement accounts or “used to make authorized purchases of property items approved by the warden;” and (4) frozen accounts, from which “[i]nmates may not withdraw funds . . . without the approval of the Warden and then only if they are serving a life or death sentence or the inmate has a documented, legitimate and

compelling use for the funds.” *DOC Policy: Inmate Accounts and Financial Responsibility*, 1.1.B.2, 6–11 (2012) [hereinafter *DOC Inmate Account Policy*], available at <http://doc.sd.gov/about/policies/documents/InmateAccountsandFinancialResponsibility.pdf>.

The PLRA, on the other hand, does not distinguish between types of prisoner accounts, nor does it define the term “prisoner’s account.” Rather, it merely states that courts are to collect filing fees from a prisoner’s account. 28 U.S.C. § 1915(b). In the absence of legislative history or case law to the contrary, the court presumes that Congress intended to give deference to state administrative restrictions in determining which funds to include among a prisoner’s assets for purposes of calculating court filing fees. As previously noted, South Dakota Administrative Rule 17:50:01:21 specifies that frozen accounts are “to be saved until release,” and can only be drawn from prior to release “with the approval of the warden.” The South Dakota Department of Corrections takes this restriction one step further by specifying that the warden can only give approval if an inmate is serving a life or death sentence, or if “the inmate has a documented, legitimate and compelling use for the funds.” *DOC Inmate Account Policy* at 11.¹

Applying those restrictions to the instant case, it follows that unless Miller is serving a life sentence or has a “compelling use for the funds,” he cannot request that funds from his frozen account be released. Therefore, because Miller is not, in fact, serving a life sentence, and because the payment of a court filing fee does not constitute a “compelling use for the funds,”

¹ Elsewhere, DOC policy states that the transfer of funds from the frozen account to a spend or savings account is “[s]pecific to inmates serving a life sentence and with Warden’s approval.” *DOC Inmate Account Policy* at 8.

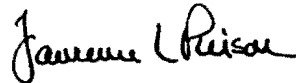
Miller cannot request access to his frozen account.² Accordingly, the amount of money in Miller's frozen account should not be considered in calculating the funds available to Miller for the payment of court filing fees.

ORDERED that Miller's Motion for Reconsideration is granted.

IT IS FURTHER ORDERED that Miller provide the court with an updated Prisoner Trust Account Report. In accordance with this order, the Prisoner Trust Account Report will not include funds present in Miller's frozen account.

Dated this 23rd day of January, 2013.

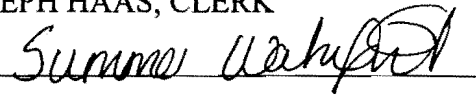
BY THE COURT:



LAWRENCE L. PIERSOL
UNITED STATES DISTRICT JUDGE

ATTEST:

JOSEPH HAAS, CLERK

BY: 

DEPUTY

² Court fees are among the payments explicitly accounted for within the designation of funds held in "disbursement accounts." The court therefore finds that the payment of a court filing fee does not constitute a "compelling use" of frozen funds.