

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**EDITH MAE MAY,  
Plaintiff,**

**v.**

**Case No. 16-C-0987**

**SARA CHRISTAIN,  
Defendant.**

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**EDITH MAE MAY,  
Plaintiff,**

**v.**

**Case No. 16-C-1131**

**JASON JESKY, et al,  
Defendants.**

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**EDITH MAE MAY,  
Plaintiff,**

**v.**

**Case No. 16-C-1150**

**RON KELLAR,  
Defendant.**

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**EDITH MAE MAY,  
Plaintiff,**

**v.**

**Case No. 16-C-1552**

**TIGHTWAD MAGAZINE, et al,  
Defendants.**

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**EDITH MAE MAY,  
Plaintiff,**

**v.**

**Case No. 16-C-1669**

**CHARLES BROWN, et al,  
Defendants.**

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**DECISION AND ORDER**

Edith Mae May is an inmate in the custody of the Wisconsin Department of Corrections who has commenced multiple actions in this court under 42 U.S.C. § 1983,

some of which were assigned to me. Along with her complaint in each action, May filed a motion for leave to proceed in forma pauperis—that is, without prepayment of the filing fee for a civil action. Because May was in prison when she filed each complaint, her suits were subject to the Prison Litigation Reform Act (“PLRA”).

The PLRA requires prisoners to pay the full amount of the filing fee. See 28 U.S.C. § 1915(b)(1). However, if the court grants the prisoner leave to proceed in forma pauperis, the prisoner may pay the filing fee over time. The statute requires the prisoner to pay the filing fee in two stages. First, at the outset of the case, the prisoner must pay an initial partial filing fee of 20% of the greater of (a) the average monthly deposits to the prisoner’s institution trust account for the 6-month period immediately preceding the filing of the complaint, or (b) the average monthly balance in the prisoner’s institution trust account for the same period. 28 U.S.C. § 1915(b)(1). Second, after payment of the initial partial filing fee, the prisoner must make monthly payments until she has paid the filing fee in full. The statute describes the requirement to make monthly payments 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).

In each of her actions, May was granted leave to proceed in forma pauperis. She was assessed, and paid, an initial partial filing fee in each case. To collect the balance of the filing fee, the court entered an order that tracked the language of § 1915(b)(2). It

ordered the Secretary of the Wisconsin Department of Corrections or his designee to collect the balance of the filing fee “by collecting monthly payments from the plaintiff’s prison trust account in an amount equal to 20% of the preceding month’s income credited to the prisoner’s trust account and forwarding payments to the clerk of the court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).” *See, e.g.*, ECF No. 7 in E.D. Wis. Case No. 16-C-0987.

Each of May’s cases was resolved long ago, either by the court’s entry of judgment against May or by her having voluntarily dismissed the case. However, because the filing fee for each action has not been paid in full, the court continues to receive payments from the Department of Corrections each month. On May 2, 2019, the court received a motion from May in which she asks the court to stop the ongoing deductions from her prison account and to refund the deductions made in prior months.<sup>1</sup> In the motion, May contends that § 1915(b)(2) and the court’s order regarding collection of the balance of the filing fee allows the Department of Corrections to deduct payments from her prison account only in months in which there is a balance of more than \$10. She then declares that her monthly balance never exceeds \$10 because she receives, at most, \$8 per month in income and receives no financial help from family or friends. May states that, nonetheless, the Department of Corrections has been deducting 20% of her income each month for each federal case in which the filing fee has not been paid

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<sup>1</sup> May filed identical motions in each of the actions assigned to me. In addition, she filed identical motions in three actions assigned to Magistrate Judge Nancy Joseph. The magistrate judge has denied May’s motions in the three actions assigned to her. *See* E.D. Wis. Case Nos. 18-C-1452, 19-C-0286, and 19-C-0516.

in full. She states that, after the deductions are made, she is left with no money to buy hygiene products.

I will characterize May's motion as one to clarify my prior orders requiring the Department of Corrections to collect monthly payments from her prison account. To decide her motion, I must interpret § 1915(b)(2) and determine what it means when it says that the agency shall send payments to the court "each time the amount in the account exceeds \$10." Read literally and in isolation from the rest of the statute, this language means that the agency must send payments only when the balance in the account is \$10.01 or more. However, the immediately preceding sentence of the statute focuses on the "income credited to the prisoner's account." Moreover, the Seventh Circuit has determined that the agency having custody of a prisoner must send a payment to the court for any month in which "receipts" or "the amount entering the trust account" exceeds \$10. *Lucien v. DeTella*, 141 F.3d 773, 776 & n.† (7th Cir. 1998). Reading § 1915(b)(2) as a whole and in light of *Lucien*, I conclude that the agency having custody of the prisoner must send a payment to the court for any month in which *either* the balance of the account exceeds \$10 *or* the amount of money entering the account exceeds \$10.

This interpretation of § 1915(b)(2) is in line with the one of the purposes of the PLRA, which is to give prisoners an economic disincentive to filing frivolous cases. See *Roller v. Gunn*, 107 F.3d 227, 230–31 (4th Cir. 1997); see also *Woodford v. Ngo*, 548 U.S. 81, 84 (2006) (purpose of PLRA is to bring prisoner litigation under control); *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000) (PLRA was designed to reduce the number of frivolous suits by prisoners). If the agency having custody of the prisoner were

required to send a payment to the court only when the balance of the account exceeds \$10, then a prisoner could evade paying the filing fee by intentionally spending down his or her account before the balance reaches \$10. Thus, Congress must have intended the agency to send payments not only in months in which the balance exceeds \$10, but also in months in which the amount of money credited to the account exceeds \$10.

Judge Barbara Crabb of the Western District of Wisconsin has determined that the Department of Corrections must collect monthly payments even in months in which the balance of the account does not cross the \$10 threshold. See *Williams v. Litscher*, 115 F. Supp. 2d 989, 991 (W.D. Wis. 2000). The judge observed that, read literally, § 1915(b)(2) directs prison officials “to wait to send a check to the court until the balance of the prisoner’s account exceeds \$10.” *Id.* She concluded that this cannot be what Congress intended. Judge Crabb reasoned that if prisoners spend their paychecks as they get them, the balance in their accounts will never exceed \$10, and thus the court would never receive the full filing fee. *Id.*

To solve this problem, Judge Crabb interpreted § 1915(b)(2) as follows. First, regardless of the balance of the account at any given time, prison officials must “capture” 20% of the income to the account each month and set it aside as a distinct accounting entry within the account. *Id.* Then, when the amount associated with this accounting entry exceeds \$10, prison officials must write a check to the court for that amount. *Id.*

Although I agree with Judge Crabb that § 1915(b)(2) requires the collection of payments even in months in which the balance of the inmate’s trust account does not exceed \$10, I disagree with her approach to collecting monthly payments. Judge

Crabb's interpretation of the statute deprives the prisoner of the benefit of the \$10 limit. Under her interpretation, no matter how small the prisoner's monthly account balance or income might be, the agency always takes 20%. However, as the Fourth Circuit has observed, Congress designed the \$10 limit to "ensure that prisoners need not 'totally deprive themselves of those small amenities of life which they are permitted to acquire in a prison or mental hospital beyond the food, clothing, and lodging already furnished by the state.'" *Roller*, 107 F.3d at 233 (quoting *Evans v. Croom*, 650 F.2d 521, 524 (4th Cir. 1981)). May's motion illustrates how taking payments in months in which the prisoner's income is less than \$10 results in the deprivation of the small amenities of life. She declares that, after the deduction of federal filing fees, she is left with no money to buy hygiene products. See, e.g., Case No. 16-C-0987 ECF No. 26, at p. 3 of 5.<sup>2</sup>

Accordingly, unlike Judge Crabb, I do not understand the \$10 limit to govern the prison's accounting and check-writing practices.<sup>3</sup> Instead, it governs when deductions from the prisoner's account may be made. For the reasons stated above, I conclude that § 1915(b)(2) does not require the deduction or mailing of a monthly payment unless

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<sup>2</sup> Of course, May has filed many federal cases, and therefore her inability to buy hygiene products is likely due to the number of filing fees she has incurred. However, even prisoners who have filed only a single case could suffer if 20% deductions are made in months when their income is below \$10. For example, a prisoner who makes \$1.00 per month and loses 20¢ per month to filing fees may find it hard to purchase hygiene products or other amenities available at the prison commissary.

<sup>3</sup> I note that the Wisconsin Department of Corrections does not operate in accordance with Judge Crabb's understanding of § 1915(b)(2). This court's financial records show that the Department routinely sends payments of less than \$10. In Case No. 16-C-0987, for example, the Department sent dozens of payments to the court, none of which was over \$10. Most payments were for less than \$1.00, including one payment of 8¢. Thus, the Department does not appear to be capturing the 20% deductions, setting them aside as separate accounting entries, and sending them to the court only when the amount set aside exceeds \$10.

either the balance of the account or the preceding month's income to the account exceeds \$10. I will grant May's motion to the extent that it asks me to clarify the court's prior orders requiring the Department of Corrections to collect the balance of the filing fees she has incurred.

May's motion also asks for a refund of the prior deductions made from her account and sent to the court. She states that she never received more than \$10 in a month, and that therefore all prior deductions were improper. While it may be true that the prior deductions were not required by § 1915(b)(2), it does not follow that she is entitled to a refund. Under § 1915(b)(1), May owed the money that she paid towards her federal filing fees. The Department of Corrections' practices have only resulted in her paying the fees faster than § 1915(b)(2) requires. But that part of the statute creates a required minimum payment—it does not provide that, if the prisoner pays more than the minimum, he or she is entitled to a refund. Instead, "every litigant has the legal responsibility to pay the filing and docketing fees to the extent feasible." *Walker v. O'Brien*, 216 F.3d 626, 638 n.5 (7th Cir. 2000) (quoting *Longbehn v. United States*, 169 F.3d 1082, 1083 (7th Cir.1999)). In *Walker*, the Seventh Circuit concluded that "[b]y definition, a prisoner was able to pay anything that he or she has already paid." *Id.* I add that granting the plaintiff a refund now would result in a windfall. True, the plaintiff was denied the ability to purchase hygiene and other commissary products in prior months. But that harm has already occurred and could not be undone by a lump-sum refund today. Accordingly, May's request for a refund will be denied.

For the reasons stated, **IT IS ORDERED** that May's motion to stop filing fee deductions and refund filing fee deductions is **GRANTED IN PART** and **DENIED IN**

**PART.** The motion is granted to the extent that the court clarifies that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from the plaintiff's trust account the balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the account only in months in which either (1) the balance in the account exceeds \$10 or (2) the income credited to the account in the preceding month exceeded \$10. In all other respects, the motion is denied.

**IT IS FURTHER ORDERED** that the Clerk of Court shall transmit a copy of this order to the warden of the institution where May is confined.

Dated at Milwaukee, Wisconsin, this 10th day of September, 2019.

s/Lynn Adelman  
LYNN ADELMAN  
United States District Judge