

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STEPHEN STONE,

Plaintiff,

v.

WORCESTER COUNTY SHERIFF'S
OFFICE, et al.,

Defendant.

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C.A. No. 18-10011-ADB

ORDER

BURROUGHS, D.J.

For the reasons stated below, the Court denies without prejudice the plaintiff's motion for leave to proceed *in forma pauperis*. The Court also denies without prejudice the motion for appointment of *pro bono* counsel.

I. Background

On January 2, 2018, *pro se* plaintiff Stephen Stone, who is confined at the Bridgewater State Hospital, filed a civil rights complaint in which he complains of inadequate medical care while he was in the custody of the Worcester County Sheriff's Office. He also filed a motion for leave to proceed *in forma pauperis* [ECF No. 2] and two prison account statements. The most recent prison account statement [ECF No. 4], dated January 3, 2018, was issued by Bridgewater State Hospital. Although the statement purports to cover the period from July 3, 2017 to January 3, 2018, the document only contains a record of four transactions in December 2017.

II. Discussion

To proceed with an action without the prepayment of fees, a prisoner must file a motion to proceed *in forma pauperis* with "a certified copy of the trust fund account statement . . . for the prisoner for the 6-month period immediately preceding the filing of the complaint . . .

obtained from the appropriate official *of each prison at which the prisoner is or was confined.*” 28 U.S.C. § 1915(a)(2) (emphasis added). The Court then assesses, and when funds exist, collects from the prisoner an initial partial filing fee of twenty percent of the average monthly deposits or the average monthly balance in the prisoner's trust account for the six-month period immediately preceding the filing of the complaint. *See* 28 U.S.C. § 1915(b)(1). The prisoner pays the rest of the \$350 filing fee over a period of time. *See* 28 U.S.C. § 1915(b)(2).

Here, Stone did not provide a prison account statement that covers the six-month period prior to filing this action. Although the statement from Bridgewater State Hospital indicates that it covers a six-month period, it does not contain Stone’s financial information for any time during those six months when he was not actually confined in that institution. Not only does the statement suggest on its face that it is limited, it is clear from an exhibit that Stone attached to his motion for *pro bono* counsel [ECF No. 6] that he was not at Bridgewater State Hospital for the six-month period prior to filing this action on January 3, 2018. The exhibit [ECF No. 6-2] consists of a motion prepared by his criminal defense attorney. In the motion, dated August 25, 2017, counsel states that Stone is confined at the Billerica House of Correction and that he had also been in the custody of the Worcester and Norfolk Sheriff’s Departments. *See id.* at 14.

Without account statements that cover the six-month period preceding the filing of this action, the Court cannot accurately assess Stone’s financial situation or calculate an initial partial filing fee.

II. Conclusion

Accordingly, the motion for leave to proceed *in forma pauperis* is DENIED WITHOUT PREJUDICE. Should Stone wish to proceed with this action, he must file a renewed motion for leave to proceed *in forma pauperis* with prison account statements obtained from the appropriate official of each institution at which Stone is or was confined in the six-month period preceding

the filing of the lawsuit. In the alternative, Stone may pay the \$350 filing fee and the \$50 administrative fee. Failure to comply with this directive within thirty-five days will result in dismissal of this action without prejudice.

The motion for counsel [ECF No. 6] is DENIED WITHOUT PREJUDICE to renewal after the filing fee has been resolved, the Court has conducted a preliminary review of the complaint, and the defendants have been served with and responded to the complaint.

IT IS SO ORDERED.

Dated: February 21, 2018

/s/ Allison D. Burroughs
ALLISON D. BURROUGHS
DISTRICT JUDGE