

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

MICHAEL FAIN,

Plaintiff,

v.

**Civil Action No. 5:10cv32
(Judge Stamp)**

**DR. GREG KRISHNER AND
WEXFORD HEALTH SOURCES,**

Defendants.

OPINION/REPORT AND RECOMMENDATION

This § 1983 civil rights action was initiated by the plaintiff on March 17, 2010. That same day, the plaintiff was granted permission to proceed as a pauper under 28 U.S.C. § 1915, assessed the entire \$350 filing fee and directed to pay an initial partial filing fee of \$8.01. After he failed to timely pay the initial partial fee, the Court issued an Order for the plaintiff to Show Cause why the case should not be dismissed for the failure to prosecute. In response, the plaintiff filed a motion to dismiss his case without prejudice. In the motion, the plaintiff advises the Court that he is unable to pay the required filing fee at this time and seeks more time to prepare his case.

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the plaintiff's motion should be granted. However, because the plaintiff is proceeding *pro se*, the undersigned finds that prior to dismissing this case, the plaintiff should be made aware of the fact that even if the Court dismisses his case at this time, he will still be responsible for the entire \$350 filing fee. When the plaintiff was granted *in forma pauperis* status he was assessed the \$350 filing fee. Whether his case is dismissed by his choice, or for any other reason, he is still required to pay the entire fee. See 28 U.S.C. § 1915(b)(1) ("if a prisoner brings a civil action or files an appeal in forma pauperis, the

prisoner shall be required to pay the full amount of the filing fee”). Thus, voluntarily dismissing his case will not relieve the plaintiff of his filing fee obligation.

Accordingly, pursuant to Fed.R.Civ.P. 41(a)(1), the undersigned recommends that the plaintiff’s Motion to Dismiss his case without prejudice (dckt. 11) be **GRANTED**, and this case be **DISMISSED without prejudice**, if, after consideration of the circumstances described herein, the Court does not hear to the contrary from the plaintiff within **fourteen (14) days** from the date of this Opinion/Report and Recommendation. Any objections to this Opinion/Report and Recommendation shall be in writing and clearly identify those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro se* plaintiff by certified mail, return receipt requested, to his last known address as shown on the docket.

DATED: May 20, 2010.

John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE