

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

CHAYA JONES)	
)	
Plaintiff,)	
)	
vs.)	Case No. 08-2360-EFM-DWB
)	
PROVIDENCE MEDICAL CENTER, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**REPORT AND RECOMMENDATION OF
DENIAL OF IFP STATUS AND DISMISSAL**

Plaintiff Chaya Jones filed an “Motion to Proceed Without Payment of Fees, Costs, or Security” (IFP Application). (Doc. 2, sealed.) On August 5, 2008, Judge Waxse held that Plaintiff’s application was deficient and denied the motion without prejudice. (Doc. 4.) Judge Waxse held that Plaintiff would be required to provide the Court with a financial affidavit to support any future request for filing without payment of fees, and he attached to his Order the necessary forms to be used by Plaintiff in renewing her application.

In the latter part of 2008, this case was reassigned to Judge Melgren and to the undersigned magistrate judge. *See* Doc. No’s 5, 6. On January 27, 2009, approximately six months after Judge Waxse’s order, the court entered an order

setting a deadline of February 20, 2009 for Plaintiff to submit the required financial affidavit and renewed application to file the case without payment of the fees or, in the alternative, to pay the filing fee. (Doc. 7.) Plaintiff, however, has not submitted any required financial affidavit nor has she paid the filing fee to file the present case. Plaintiff was advised in the January 27, 2009 Order that her failure to comply with that order would result in the issuance of a report and recommendation to the district judge that this case should be dismissed. (Doc. 7 at 2.)¹

For the above reasons, the undersigned magistrate judge RECOMMENDS that the above case be dismissed for failure of Plaintiff to comply with the January 27, 2009 Order, and failure to either submit the required financial affidavit and forms or, in the alternative, to pay the required filing fee.

A copy of this recommendation shall be sent to Plaintiff *via* certified mail. Pursuant to 28 U.S.C. §636(b)(1), Fed.R.Civ.P. 72, and D.Kan. Rule 72.1.4, Plaintiff shall have ten days after service of a copy of these proposed findings and recommendations to serve and file with the U.S. District Judge assigned to the

¹ A United States Magistrate Judge, on a plaintiff's motion to proceed in forma pauperis, should issue a report and recommendation as to whether the plaintiff is entitled to IFP status, rather than denying motion outright, since denial would be the functional equivalent of involuntary dismissal. *Lister v. Department of Treasury*, 408 F.3d 1309, 1311-12 (10th Cir. 2005).

case, any written objections to the findings of fact, conclusions of law, or recommendations of the magistrate judge. A party's failure to file such written, specific objections within the ten-day period will bar appellate review of the proposed findings of fact, conclusions of law, and the recommended disposition.

Dated at Wichita, Kansas, on this 24th day of February, 2009.

s/ DONALD W. BOSTWICK
DONALD W. BOSTWICK
United States Magistrate Judge