

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARK D. MARSHALL,

Petitioner,

v.

ORDER

07-C-173-C

DOC Secretary MATTHEW J. FRANK,  
PHIL KINGSTON, Warden of Waupun,  
GARY ANKARLO, Chief Psychologist,  
JEFFREY GARBELMAN, Psychologist,  
DEBORAH FISCHER, Psychologist, MARY  
GURSKI, Nurse Practitioner, ICE JAMES  
MUENCHOW, ICE THERESA MURPHY,  
BELINA SCHRUBBEE, HSU Manager,  
LIEUTENANT HOLM, KIM BAUER, Seg.  
Program Assistant and BRUCE SIEDSCHLAG,  
Seg. Unit Manager,

Respondent.

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In an order entered in this case on March 29, 2007, I assessed petitioner an initial partial payment of the \$350 filing fee in the amount of \$1.33, and asked him to submit it to the court no later than April 19, 2007. In that order, I noted that petitioner had received only two \$20 deposits to his account in the past six-month period, that his present account balance was zero and that he might have to ask for more time to pay the initial partial

payment if he did not receive another deposit in time to meet the April 19 deadline. Now plaintiff has moved for an enlargement of time within which to make the payment. That request will be granted.

In support of his request, plaintiff does not contend that he does not expect to receive another deposit anytime soon. Instead, he states every time he receives money, 100 percent of it is being taken to pay restitution, medical co-payments and victim witness surcharges.

With one exception, the Court of Appeals for the Seventh Circuit has not determined the priority to be given to a prisoner's obligations under the Prison Litigation Reform Act. The exception relates to initial partial payments. In Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1977), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000), and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), the court of appeals noted that how much a prisoner owes, and how it will be collected, is determined entirely by 28 U.S.C. § 1915 and is outside the prisoner's (and the prison's) control once the prisoner files a complaint or notice of appeal. The court went on to rule that it was error for the district court to fail to collect an initial partial payment from an inmate who was receiving periodic income, simply because the money was directed elsewhere as quickly as it was earned. In the view of the court, collection of the assessment "should have come off the top of the next deposit of prison wages . . . ." Because nothing in the statute authorizes prison officials to refuse to make an initial partial payment simply because a prisoner owes payments on other

obligations, petitioner is likely mistaken that he will be unable to pay the assessed amount because he owes other obligations.

Petitioner has not addressed the question when he might receive another deposit to his account. Nevertheless, because he may have presumed that he would not have to pay the assessed for the reason he advanced in his motion, he is not likely in a position to arrange for the payment by April 19. Therefore, I will extend the deadline to allow petitioner to arrange for payment of the assessment off the top of the next deposit to his account.

#### ORDER

IT IS ORDERED that petitioner may have an enlargement of time to May 10, 2007, in which to submit a check or money order made payable to the clerk of court in the amount of \$1.33. If, by May 10, 2007, petitioner fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In

that event, the clerk of court is directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 13th day of April, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge