

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

JAMES JENKINS,

Petitioner,

v.

PEGGY LAUTENSCHLAGER and
STATE OF WISCONSIN,

Respondents.

ORDER

07-C-184-C

On March 30, 2007, petitioner James Jenkins, a prisoner at the Wisconsin Resource Center, filed this civil action under 42 U.S.C. § 1983, requesting leave to proceed in forma pauperis. In an order dated April 3, 2007, I determined that petitioner was otherwise qualified for pauper status and, after examining his trust fund account statement, assessed him an initial partial payment of \$1.00, which petitioner was directed to pay no later than April 24, 2007.

Now, petitioner has submitted a letter dated April 4, 2007, in which he states that he does not have the means to pay the dollar and has no means of acquiring any additional money. He asks the court to waive the initial partial payment.

In an order dated April 6, 2007, I denied a similar motion filed by petitioner in Case No. 05-C-609-C, explaining that petitioner's trust fund account statement shows that over the past six months, he has received several deposits to his account. Although petitioner's current balance is minimal, his immediate lack of income is not sufficient by itself to allow me to conclude that he lacks the means to pay the initial partial payment. See 28 U.S.C. § 1915(b)(4). As I explained in the April 6 order, the court of appeals has held that "[a] prisoner with periodic income has 'means' even when he lacks 'assets.'" Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1997).

I will deny petitioner's motion to waive the initial partial payment assessed against him; however, I will grant him an enlargement of time in which to pay the initial partial payment until he receives another deposit. On the court's own motion, petitioner may have an enlargement of time to May 7, 2007, in which to submit a check or money order made payable to the clerk of court in the amount of \$1.00. If, by May 7, 2007, petitioner fails to pay the assessed amount or show cause for his failure to do so, this case will be dismissed without prejudice to petitioner's refiling it in the future.

ORDER

IT IS ORDERED that petitioner James Jenkins's motion to waive the \$.67 initial partial payment assessed on March 14, 2007, is DENIED. On the court's own motion,

petitioner may have an enlargement of time to May 7, 2007, in which to submit a check or money order made payable to the clerk of court in the amount of \$.67. If, by May 7, 2007, petitioner fails to pay the assessed amount or show cause for his failure to do so, this case will be dismissed without prejudice to petitioner's refiling it in the future.

Entered this 6th day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge