

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

HAROLD LEROY FISHER, JR.,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.

ORDER

07-C-639-C

Petitioner, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He requests leave to proceed in forma pauperis. Although petitioner has supported his request with an affidavit of indigency, I cannot determine whether petitioner is indigent for the purpose of filing a § 2241 petition until he submits a trust fund account statement for the six-month period immediately preceding the filing of his habeas corpus petition. Longbehn v. United States, 169 F.3d 1082 (7th Cir. 1999).

Petitioner has submitted with his request for leave to proceed in forma pauperis an account balance statement covering the period from October 2, 2007 to October 28, 2007. From information provided by the records office at FCI-Oxford, I note that petitioner was

transferred to Oxford from FCI-Leavenworth on approximately October 2, 2007. If he wishes to continue with this lawsuit, petitioner will have to write to Leavenworth and request a certified copy of his trust fund account statement for the period beginning May 2, 2007 and ending October 1, 2007. I will give petitioner until January 4, 2008 to provide the requested trust fund account statement to the court.

Once petitioner submits his trust fund account statement, this court will calculate petitioner's average monthly deposits and his average monthly balances for the six-month period mentioned above. If 20% of the greater of these two figures is \$5 or more, he will not be eligible for indigent status and will have to prepay all of the \$5 filing fee. If 20% of the greater of these two figures is less than \$5, he will be required to prepay whatever portion less than \$5 has been calculated.

Now that petitioner is aware of the formula this court uses in determining whether a prisoner is indigent for the purpose of paying a \$5 filing fee, he may be able to determine easily whether he qualifies. If he knows that he will not qualify for indigent status, he may elect to submit a check or money order made payable to the clerk of court in the amount of \$5 in lieu of the statement from Leavenworth requested above. In any event, petitioner should act quickly. If, by January 4, 2008, petitioner does not submit either the \$5 payment or the requested trust fund account statement, his request for leave to proceed in forma pauperis will be denied and this action will be closed.

One further matter requires comment. Petitioner has filed a “motion to amend pleadings in petitioner’s writ of habeas corpus pursuant to 28 U.S.C. 2241,” dated November 19, 2007, and a letter dated November 23, 2007, requesting a copy of his original petition filed on November 2, 2007. I will accept petitioner’s “motion to amend” as an addendum to his petition and consider it at the same time I review his original petition. With regard to petitioner’s copy request, I am enclosing one of the copies of the original petition petitioner provided at the time of filing of this case.

ORDER

IT IS ORDERED that petitioner may have until January 4, 2008, in which to submit a trust fund account statement covering the period beginning May 2, 2007 to October 1, 2007. Alternatively, petitioner may pay the \$5 fee for filing his petition. If, by January 4, 2008, petitioner does not pay the filing fee or submit the required trust fund account statement, I will deny petitioner’s request for leave to proceed in forma pauperis in this action for his failure to show that he is indigent.

Further, IT IS ORDERED, that petitioner’s “motion to amend” is CONSTRUED as an addendum to his petition and I will consider it at the same time I review his original

petition.

Entered this 30th day of November, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge