

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

CURTIS J. PIDGEON,

Petitioner,

v.

JUDY SMITH,

Respondent.

ORDER

13-cv-57-bbc

In a December 13, 2013 order in this habeas corpus proceeding, I concluded that the Wisconsin Court of Appeals' application of federal law to petitioner Curtis Pidgeon's claim was unreasonable, that an evidentiary hearing would be necessary to resolve his claim, dkt. #28, that the hearing would be scheduled after a ruling on petitioner's motion for appointment of counsel and that it would be appropriate to appoint counsel for petitioner in this case so long as petitioner could show that he is financially eligible under the Criminal Justice Act, 18 U.S.C. § 3006A(a)(2). Dkt. #28.

In response to the December 13 order, petitioner has submitted a six-month trust fund account statement showing an average monthly balance of \$1521.82 and average monthly deposits of \$291.30. Additionally, petitioner says that he receives a yearly stipend from the Ho-Chunk Nation of \$12,000, and that he otherwise has negligible assets outside of his prison account.

Generally, the standard for eligibility for appointment of counsel under § 3006A is not indigence, but rather a lower standard—whether the party is “financially unable to obtain counsel.” United States v. Osuna, 141 F.3d 1412, 1414 (10th Cir. 1998); United States v. Sarsoun, 834 F.2d 1358, 1362 n.6 (7th Cir. 1987). Although petitioner bears the ultimate burden of demonstrating financial eligibility under the Criminal Justice Act, “[a]ny doubts as to a person’s eligibility should be resolved in the person’s favor; erroneous determinations of eligibility may be corrected at a later time.” 7 Administrative Office of the United States Courts, Guide To Judiciary Policies And Procedures, chap. 2, § 210.40.30(b).

Under this court’s standards for indigence, I would allow him to proceed in forma pauperis in a civil action under 28 U.S.C. § 1915, see, e.g., Bradley v. Flynn, no. 13-cv-859-bbc (Dec. 13, 2013) (generally, plaintiff whose gross annual income is less than \$16,000 may proceed in forma pauperis). Applying the principles discussed above, I conclude that petitioner is financially unable to obtain counsel, and I will grant his motion for appointment of counsel. Petitioner should be aware that if the court later finds that he is financially able to retain counsel, the court may terminate the appointment of counsel as the interests of justice dictate, and also may direct him to reimburse his attorney for the cost of representation. § 3006A(c), (f).

ORDER

IT IS ORDERED that petitioner Curtis Pidgeon’s motion for appointment of counsel,

dk. #26, is GRANTED. The court will recruit counsel for petitioner under the terms of the court's Criminal Justice Act Plan.

Entered this 31st day of December, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge