

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

EDWIN F. CLAY,

Petitioner,

ORDER

04-C-631-C

v.

JOSEPH SCIBANA, Warden,
Federal Correctional Institution,
Oxford, Wisconsin,

Respondent.

Petitioner has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and requests leave to proceed in forma pauperis. He supports his request for leave to proceed in forma pauperis with an affidavit of indigency and a copy of his trust fund account statement for the six-month period immediately preceding the filing of his petition.

In determining whether a petitioner is indigent for the purpose of filing a § 2241 petition, this court calculates the average monthly deposits and the average monthly balances in the petitioner's prison account for the six-month period mentioned above. If 20% of the greater of these two figures is \$5 or more, then the petitioner is not eligible for indigent status and must prepay all of the \$5 filing fee. If 20% of the greater of these two figures is

less than \$5, the petitioner must prepay whatever portion of \$5 the 20% calculation works out to be.

Petitioner's trust fund account statement reveals that he has deposits totaling \$945.08 to his prison account over the last six-month period, for an average monthly deposit of \$157.51. It is unnecessary to calculate petitioner's monthly balances for the same six month period, because regardless which amount is greater, he does not qualify for indigent status. Twenty percent of \$157.51 is \$31.50, which is considerably more than the \$5 filing fee.

Accordingly, IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis in this case is DENIED. Petitioner may have until September 18, 2004, in which to submit a check or money order made payable to the clerk of court in the amount of \$5 to cover the fee for filing his petition. If, by September 18, 2004, petitioner fails to pay the fee or show cause why he is unable to do so, then the clerk of court is directed to close this file for petitioner's failure to prosecute.

Entered this 1st day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge