

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

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JOSEPH VAN PATTEN,

Petitioner,

ORDER

v.

06-C-374-C

D.O.C., MATTHEW FRANK,  
MORAINE PARK TECHNICAL COLLEGE,  
JOHN DOE, JOSEPH LUDWIG and  
DR. LUY,

Respondents.  
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Petitioner Joseph Van Patten filed his complaint in this case on July 11, 2006. In an order entered on July 17, 2006, I assessed petitioner an initial partial payment of the \$350 fee for filing his complaint in the amount of \$23.96. I calculated the assessment in accordance with the formula described in 28 U.S.C. § 1915 with one exception. Because the trust fund account statement petitioner submitted with his complaint covered a three-month period only (February 15, 2006 to May 16, 2006) and not the full six-month period immediately preceding the filing of his complaint as § 1915(a)(2) requires, I divided the total deposits shown on the statement by three so as to accurately determine the greater of the average monthly deposits and the average monthly balance. Now petitioner has filed a letter

dated July 18, 2006, in which he states that he is “100% indigent.” He states that he does not have \$23.96 in his inmate account, does not have a release account, and that his prospects of earning money in the future to pay the initial partial payments or subsequent installments are dim because he has no job or income of any kind.

As I told petitioner in the July 17 order, because he is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. One of the requirements of the act is that petitioner pay an initial partial payment of the filing fee calculated from a trust fund account statement for the six-month period immediately preceding the filing of his complaint. So long as the statement shows that the petitioner has the means to pay an initial partial payment, he is required to do so. Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1997), rev’d on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). The abbreviated statement petitioner submitted to this court shows that between mid-February and mid-May, he was receiving regular deposits to his account. Under Walker v. O’Brien, 216 F.3d 626 (7th Cir. 2000), a prisoner with periodic income has “means” even when he lacks “assets.” However, if petitioner were to supplement his trust fund account statement with a certified copy of his account for the period beginning in mid-May and ending on July 11, 2006, and that statement were to show that his balance is zero and that he has received no income to his account in the recent past, then I could conclude that he lacks the means to pay an initial partial payment and I would modify the July 17 order accordingly.

ORDER

IT IS ORDERED that the deadline within which petitioner is to pay an initial partial payment of the \$350 fee for filing this case is SUSPENDED. Petitioner may have until August 7, 2006, in which to file a supplement to his trust fund account statement for the period beginning May 16, 2006 and ending July 11, 2006. If, by August 7, 2006, petitioner fails to submit the supplemental statement 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 24th day of July, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge