

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

JOSEPH VAN PATTEN,

Petitioner,

v.

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

Respondents.

ORDER

06-C-374-C

In response to this court's order of July 24, 2006, petitioner Joseph Van Patten has filed a supplement to his trust fund account statement in an attempt to show that he cannot pay the \$23.96 initial partial payment of the fee for filing his complaint that he was directed to pay on July 17, 2006. The supplemental statement covers the period beginning May 3, 2006 and ending July 24, 2006. It shows that during that period, petitioner received two deposits in the amount of \$29 and four deposits in the amount of \$20. The last deposit made to petitioner's account was as recent as June 30, 2006. Although the statement does not reflect the precise nature of each transaction, it appears that promptly after receiving the \$20 deposit, petitioner spent at least \$11.94 on a canteen order and \$8 was disbursed with

the notation, "Rec Payment." At the present time, petitioner has a \$.02 balance.

As I already have explained to petitioner, so long as his trust fund account statement shows that he 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). Under Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), a prisoner with periodic income has "means" even when he lacks "assets." Petitioner lacks assets at this moment, but even the supplement to the statement he has submitted reveals that he is receiving periodic deposits to his account. Therefore, I will extend the time within which he must pay the initial partial payment. Petitioner will not be prejudiced by a delay in screening his complaint until after he pays the initial partial payment, because his case concerns an incident that occurred in the past for which he is seeking monetary relief.

ORDER

IT IS ORDERED that the deadline within which petitioner is to pay a \$23.96 initial partial payment of the \$350 fee for filing this case is extended to September 8, 2006. If, by September 8, 2006, petitioner has received no new deposits to his account, he may submit a certified copy of his trust fund account statement for the period beginning July 25, 2006 and ending September 5, 2006, showing that he lacks the means and the assets to pay the amount he has been ordered to pay, and I will consider his request for leave to proceed in

forma pauperis under 28 U.S.C. § 1915(b)(4). If, by September 8, 2006, petitioner fails to pay the initial partial payment or show cause in the manner described above 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 7th day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge