

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

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CLAYTON MELLENDER,

Petitioner,

v.

DR. CHARLES LARSON;  
RICHARD RAEMISCH,

Respondents.

ORDER

06-C-547-C

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Petitioner Clayton Mellender, a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin, has submitted a proposed complaint. He asks for leave to proceed in forma pauperis. Because petitioner is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. This means that before this court may decide whether he can proceed with his complaint in forma pauperis, petitioner will have to make an initial partial payment of the filing fee in the amount of \$15.33 and the remainder of the fee in monthly installments even if his request for leave to proceed is denied. If petitioner does not have the money to make the initial partial payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account.

Petitioner should be aware that his initial partial payment was calculated by adding

all of the income to his account in the past six months, dividing it by 6 to ascertain his average monthly income for the past six months and calculating 20% of that amount. I did not omit from the calculation as plaintiff requested the \$359.72 that was deposited to his account after plaintiff cashed in two savings bonds he had purchased sometime in August of 2005. In Lucien v. DeTella, 141 F.3d 773, 776 (7th Cir. 1998), the Court of Appeals for the Seventh Circuit ruled expressly that the words “income” “deposits” and “amount in the account” appearing in various provisions in § 1915 are synonymous. All deposits to an inmate’s account, regardless of their source, are to be counted as income. Id. The cash plaintiff received in exchange for his bond is no different from cash plaintiff might have received from selling a car he purchased earlier. Once the cash is deposited into his prison account for his use, it must be counted as a deposit for the purpose of calculating his initial partial payment.

#### ORDER

IT IS ORDERED that petitioner is assessed \$15.33 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$15.33 on or before October 26, 2006. If, by October 26, 2006, petitioner fails to make the initial partial payment 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 5th day of October, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge