

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

MARK D. MARSHALL,

Petitioner,

v.

ORDER

07-C-173-C

DOC Secretary MATTHEW J. FRANK,
PHIL KINGSTON, Warden of Waupun,
GARY ANKARLO, Chief Psychologist,
JEFFREY GARBELMAN, Psychologist,
DEBORAH FISCHER, Psychologist, MARY
GURSKI, Nurse Practitioner, ICE JAMES
MUENCHOW, ICE THERESA MURPHY,
BELINA SCHRUBBEE, HSU Manager,
LIEUTENANT HOLM, KIM BAUER, Seg.
Program Assistant and BRUCE SIEDSCHLAG,
Seg. Unit Manager,

Respondent.

Petitioner Mark D. Marshall, a prisoner at the Waupun Correctional Institution 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 \$1.33 and pay the remainder of the fee in monthly installments even if his request for leave to proceed is denied.

Petitioner's trust fund account statement, which begins on September 21, 2006, shows that over the past six months, petitioner has received only two deposits, each in the amount of \$20, with the most recent deposit occurring on February 8, 2007. Those funds have been spent and his balance is presently zero. Although it is not possible to predict whether petitioner will receive additional funds within the next few weeks, possibly from the same person who made the earlier \$20 deposits, his immediate lack of income is not sufficient by itself to allow me to conclude that he lacks the means to pay the initial partial payment. See 28 U.S.C. § 1915(b)(4). In Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1997), the court of appeals stated,

[I]t is not enough that the prisoner lack assets on the date he files. If that were so, then a prisoner could squander his trust account and avoid the fee. Section 1915(b)(4) comes into play only when the prisoner has no assets and no means by which to pay the initial partial filing fee. A prisoner with periodic income has "means" even when he lacks "assets."

It is too soon to conclude that petitioner lacks the means to pay the initial partial payment assessed in this case. Even if he does not receive another deposit in the immediate future, he is free to request an enlargement of time in which to pay the initial partial payment until he receives another deposit or he explains in an affidavit why he expects to receive no additional funds.

ORDER

IT IS ORDERED that petitioner is assessed \$1.33 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 \$1.33 on or before April 19, 2007. If, by April 19, 2007, 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 29th day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge