

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

MARK D. MARSHALL,

Petitioner,

MEMORANDUM

v.

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,

Respondents.

On March 29, 2007, I assessed petitioner Mark D. Marshall a \$1.33 initial partial payment of the \$350 fee for filing this civil action. I told petitioner that if he failed to make the initial partial payment by April 19, 2007, he would be held to have withdrawn this action voluntarily. Subsequently, petitioner asked for more time to make the payment. In an order dated April 13, 2007, I granted petitioner an enlargement of time to May 10 to

submit the initial partial payment. In that same order, I addressed petitioner's concern that prison officials might take 100% of any deposit made to his account and apply it to other debts petitioner owes. I noted that the Court of Appeals for the Seventh Circuit has ruled that collection of initial partial payments (as opposed to subsequent monthly payments) are to come "off the top" of the prisoner's first deposit following the assessment. Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1977), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000), and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000).

Now petitioner has written a letter to the court to advise it that although he received a \$25 deposit to his account on April 16, 2007, prison officials are declining to issue a check from his account to pay the initial partial payment. Plaintiff has attached to his letter a copy of an information request form he sent to the prison's financial office in which he asks that a \$1.33 check be sent to this court. In response, an M. Meyer in "Inmate Accounts" says,

I have no control concerning deductions. Deductions are determined by the DOC.

Although it is not altogether clear from M. Meyer's statement whether inmate accounts personnel are refusing to send this court the \$1.33 that petitioner has been directed to pay, I note that despite the \$25 deposit on April 16, the court's financial records reveal that petitioner has not yet paid the assessment. If prison officials at the Waupun Correctional Institution are declining to honor petitioner's request because he has other financial

obligations, they are not on firm footing. Nothing in 28 U.S.C. § 1915 authorizes prison officials to refuse to make an initial partial payment because a prisoner owes payments on other obligations. Because the inmate accounts office may not be aware of their responsibility to pay petitioner's initial partial payment off the top of the \$25 deposit made to petitioner's account on April 16, I am sending a copy of this order to the warden of the Waupun Correctional Institution and asking that he insure that the payment is made promptly.

Entered this 30th day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge