

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

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RAYMOND BILL EVANS,

Petitioner,

v.

SAUK COUNTY SHERIFF;  
DANE COUNTY SHERIFF;  
JOHN DOE/DOCTOR;  
JOHN DOE MEDICAL CONTRACTOR;

Respondents.  
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ORDER

07-C-328-C

Petitioner has been assessed an initial partial payment of \$9.89, in accordance with 28 U.S.C. § 1915. Now, petitioner has filed a document in which he asks for “more time” to make this payment. He does not say how much time he needs, presumably because he does not know; he says only that he has “no money and no one will send [him] anymore money.”

Under §1915(b)(4), a prisoner may not be prohibited from bringing a lawsuit if “the prisoner has no assets and no means by which to pay the initial partial filing fee.” Petitioner may think that he falls into the category of prisoners who have “no means” to make an

initial partial payment, but controlling authority holds otherwise. Unfortunately, petitioner's 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 pursuant to 28 U.S.C. § 1915(b)(4). In Newlin v. Helman, 123 F.3d at 435, 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."

Further, in measuring periodic income, § 1915 requires courts to look backward in time rather than forward. In other words, in determining whether a prisoner has the means to pay, the court cannot consider representations the prisoner makes about his future income or lack of it. Rather, the court must look at the prisoner's income from the previous six months. 28 U.S.C. § 1915(a)(2).

In this case, plaintiff had several significant deposits in his account over the last six months, which he apparently received from family members. From these deposits, I calculated petitioner's initial partial payment as \$9.89. Section 1915 does not grant courts discretion to reduce or waive an initial partial payment, even if the prisoner says he is unable to pay it.

I recognize that petitioner is not asking for the fee to be waived or reduced; he is only asking for more time to pay it. But it is apparent from petitioner's motion that he does not

anticipate being able to make a payment in the near future. Accordingly, I will close the case. If petitioner is able to make an initial partial payment in the future or enough time elapses that a six month trust fund account statement would show that petitioner has no means to make an initial partial payment, he may file a new lawsuit. (Because petitioner's complaint has not been screened and he has not submitted an initial partial payment, no filing fee will be assessed against petitioner.)

#### ORDER

IT IS ORDERED that petitioner's request for additional time in which to make an initial partial payment is DENIED and this case is DISMISSED WITHOUT PREJUDICE to petitioner's refileing it at a later date.

Entered this 25th day of July, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge