

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

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RALPHFIELD HUDSON,

Petitioner,

ORDER

v.

07-C-355-C

WARDEN HOBART (Retired);  
Federal Correctional Institution,  
Oxford, Wisconsin;  
DR. REED, Health Service Clinical Director;  
G. JONES, Health Service Administrator;  
T. SPENCE, Chief Pharmacist;  
McKINNON, Physician Assistant;  
J. PENAFLO, Physician Assistant,

Respondents.  
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Petitioner Ralphfield Hudson is a prisoner at the Federal Correctional Institution in Oxford, Wisconsin. He has submitted a proposed complaint and asked for leave to proceed in forma pauperis. I have examined a certified copy of petitioner's trust fund account statement and reviewed this court's own financial records. I conclude that because petitioner has not paid the debt he incurred under the 1996 Prison Litigation Reform Act in connection with an appeal he filed in another lawsuit in this district, he is not eligible to

proceed in forma pauperis in this action under 28 U.S.C. § 1915.

The court's records show that on February 24, 1997, petitioner filed an appeal in Hudson v. McHugh, 96-C-362-C, a civil action brought pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). (Petitioner does not owe the \$150 fee for filing his complaint in that case, because the complaint was filed before the 1996 Prison Litigation Reform Act took effect.). At the time he filed his appeal, the filing fee was \$105. Petitioner made an initial partial payment of that amount totaling \$5.24 on April 3, 1997. He made two subsequent payments of \$2.62 on April 21, 1997 and May 14, 1997. However, to present, he has not paid any portion of the \$94.52 balance.

28 U.S.C. § 1915(b)(2) provides that

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

In Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), the Court of Appeals for the Seventh Circuit cautioned prisoner litigants to keep a watchful eye on their accounts and insure that amounts owed under the Prisoner Litigation Reform Act are withdrawn on a monthly basis. "If in a given month the prison fails to make the required distribution from the trust account, the prisoner should notice this and refrain from spending funds on personal items until they can be applied properly." Id. at 776. Nonpayment of obligations

a prisoner incurs under the Prisoner Litigation Reform Act for any reason other than destitution is to be understood as a voluntary relinquishment of the prisoner's right to file future suits in forma pauperis, just as if the prisoner had a history of frivolous litigation. Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996).

Petitioner is not destitute. In support of his request for leave to proceed in forma pauperis in this action, he has submitted a copy of his trust fund account statement for the period beginning January 9, 2007 and ending June 9, 2007. This statement reveals that he has been receiving regular deposits to his account for at least this entire period (and I suspect considerably longer). This means that since at least January, petitioner has owed twenty percent of the preceding month's deposits in his account to pay off the debt he incurred when he filed his appeal in case no. 96-C-362-C.

The trust fund account statement petitioner submitted with his complaint reveals that the deposits to his account over the last six months have totaled \$828.63. If 20% of that amount had been applied toward petitioner's debt in case no. 96-C-362-C, he would have paid the \$94.52 amount in full by now. Therefore, before I may consider petitioner's request for leave to proceed in forma pauperis in this case, he will have to submit a check or money order made payable to the clerk of court in the amount of \$94.52 to pay the balance of the fee he owes in case no. 96-C-362-C. If petitioner pays this amount, he may arrange promptly to send a second check made payable to the clerk of court in the amount of

\$270.70, which is the amount he will owe as an initial partial payment of the \$350 fee for filing this case. (This amount has been calculated from the \$1353.52 average monthly balance maintained in petitioner's account over the past six-month period). Until petitioner pays the amount he is in arrears, however, he may not proceed in this or any other action in forma pauperis.

#### ORDER

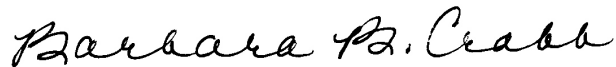
IT IS ORDERED that a decision whether petitioner may proceed in forma pauperis in this action is STAYED until July 30, 2007. By July 30, 2007, petitioner is to submit a check or money order made payable to the clerk of court in the amount of \$94.52, which is the sum he is in arrears in case no. 96-C-362-C. If, by July 30, 2007, petitioner fails to pay \$94.52 so as to bring his account in case no. 96-C-362-C up-to-date, his request for leave to proceed in forma pauperis in this action will be denied.

Further, IT IS ORDERED that if petitioner pays the amount he is in arrears in case no. 96-C-362-C by July 30, 2007, he will become eligible to take advantage of the partial payment provision in 28 U.S.C. § 1915. In that event, he may have until that same date, July 30, 2007, in which to pay an initial partial payment of the \$350 fee for filing this case in the amount of \$270.70. Petitioner should be aware that he will have to pay the remainder of the \$350 fee in monthly installments even if his request for leave to proceed

is denied at the time his complaint is screened on its merits under 28 U.S.C. § 1915(e)(2). If, by July 30, 2007, petitioner pays \$94.52 but fails to pay \$270.70, 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 11th day of July, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Barbara B. Crabb". The signature is written in dark ink and is positioned above a horizontal line.

BARBARA B. CRABB  
District Judge