

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

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JAMES M. UPTHEGROVE

Petitioner,

v.

HEALTH PROFESSIONALS, LTD.,  
DR. CULLINAN, DR. ROMANO  
and STACY ROSE, RN,

Respondents.  
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ORDER

07-C-596-C

On October 26, 2007, I assessed petitioner James Upthegrove a \$0.13 initial partial payment of the \$350 filing fee despite his expression of concern that he has debts in excess of \$400 and the minimal income he receives is immediately put toward payment of his debts. I told petitioner that I could not waive payment of the initial partial filing fee just because he had a \$0 balance in his trust fund account at the time of filing. Now petitioner has filed a motion for an extension of time to make the payment because he “has absolutely no source of income” and “the Eau Claire County Jail takes 100% of all monies [he] may receive.” I will grant petitioner’s motion for an extension of time so that he may coordinate payment of the initial partial filing fee with the financial office at the jail.

In support of his motion, petitioner does not allege that he does not expect to receive

another deposit any time soon. Instead, he states that every time he receives money, 100 percent of it is being taken to pay his debt to the jail. With one exception, the Court of Appeals for the Seventh Circuit has not determined the priority to be given to a prisoner's obligations under the Prison Litigation Reform Act. The exception relates to initial partial payments. In 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), the court of appeals noted that how much a prisoner owes, and how it will be collected, is determined entirely by 28 U.S.C. § 1915 and is outside the prisoner's (and the prison's) control once the prisoner files a complaint or notice of appeal. The court went on to hold that it was error for the district court to fail to collect an initial partial payment from an inmate who was receiving periodic income, simply because the money was directed elsewhere as quickly as it was earned. In the view of the court, collection of the assessment "should have come off the top of the next deposit of prison wages . . . ." Because nothing in the statute authorizes prison officials to refuse to make an initial partial payment simply because a prisoner owes payments on other obligations, petitioner is likely mistaken that he will be unable to pay the assessed amount because he owes other obligations.

Accordingly, IT IS ORDERED that the deadline within which petitioner is to submit a check or money order made payable to the clerk of court in the amount of \$0.13 is extended to December 11, 2007. In order to insure payment of the assessed amount, I am sending a copy of this order to petitioner's warden and requesting that he take whatever

steps are necessary to see to it that the initial partial payment ordered in this case is paid from the next deposit made to petitioner's account. If, by December 11, 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 20th day of November, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge