

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

JAMES EDWARD GRANT,

Petitioner,

ORDER

v.

08-cv-669-slc

DEBRA BARTH of Columbus, WI,

Respondent.

JAMES EDWARD GRANT,

Petitioner,

ORDER

v.

08-cv-672-slc

MR. T. SCHAEFER, MR CAHILL, MR. MAICKE,
MR. VANDERMOLEN, GREG BROCKMEYER,
MR. TWOMBLY (LT. TWOMBLY), MR.
BUCHMAN and MR. MCMURTY,

Respondents.

Petitioner has responded to this court's November 21, 2008 order assessing \$.52 initial partial payments of the \$350 fees for filing these cases. In his response, petitioner says that he is indigent and "owe[s] \$24 for medical co-pay." Under the 1996 Prison Litigation Reform Act and 28 U.S.C. § 1915, petitioner is required to make initial partial payments of the fees for filing these cases unless he lacks means to do so. Petitioner does not lack means. Although he may be out of funds temporarily, he received a \$15 deposit to his account as recently as September

11, 2008. Therefore, I cannot conclude that petitioner qualifies for waiver of the initial partial payments under 28 U.S.C. § 1915(b)(4).

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. Petitioner’s immediate shortage of income is not sufficient by itself to allow me to conclude that he lacks the means to pay the initial partial payments pursuant to § 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).

My review of the inmate account statement petitioner submitted at the time of filing his complaints shows that funds he receives to his account are withdrawn to pay for “commissary purchases” and medical debts. Although the Seventh Circuit has not definitively ruled on the

question whether jails and prisons may ignore a petitioner's obligations under the PLRA in favor of making payments on debts a prisoner owes to the county, the state or even his victims under a restitution program, he should not be prevented from making the initial partial payments he has been assessed in these cases. In Newlin, the court of appeals suggested in dicta that prison officials are required by statute to give priority to federal court filing fees. Id. at 435-36 (“[initial partial payment] should have been immediate, and its collection should have come off the top of the next deposit of prison wages”).

Therefore, although I am unwilling to apply the waiver provision set out in § 1915(b)(4) at this time, I will grant petitioner an enlargement of time in which to make the initial partial payments. If, by January 2, 2009, petitioner is unable to pay the initial partial payments, I will consider that he has withdrawn these actions and he will not owe the filing fees. In that event, if, at some future time, enough time elapses that a six-month inmate account statement would show that he owes no initial partial payment based on his lack of means, he would be free to file a new lawsuit.

ORDER

IT IS ORDERED that petitioner may have an enlargement of time to January 2, 2009, in which to pay the \$.52 initial partial payments of the \$350 fees for filing these cases. If, by January 2, 2009, petitioner fails to make the initial partial payments or show cause for his failure to do so, he will be held to have withdrawn these actions voluntarily. In that event, the clerk of

court is directed to close these files without prejudice to petitioner's filing his cases at a later date.

Entered this 3rd day of December, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge