

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

EARL D. PHIFFER,

Plaintiff,

v.

JON DOE, Sheriff, JON DOE, Officer One,
JON DOE, Officer Two, JON DOE, Officer Three,
JON DOE, Officer Four, JON DOE, Officer Five,
JON DOE, Officer Six, JON DOE, Officer Seven,
Hon. MICHAEL J. BYRON, A.D.A., MR. GERALD
URBIK and Atty. MR. JOSHUA KLAFF, in their
individual and official capacities,

Defendants.

ORDER

09-cv-285-slc¹

EARL D. PHIFFER,

Plaintiff,

v.

Warden, GREGORY GRAMS and
Sgt. PISCHKE, individually and in
their official capacities,

Defendants.

ORDER

09-cv-286-slc

¹ For the purpose of issuing this order, I am assuming jurisdiction over these cases.

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Plaintiff Earl Philffer has filed a motion to modify payment of his filing fees to exempt gift money he receives in his inmate account from garnishment under 28 U.S.C. § 1915(b)(2). In addition, plaintiff requests that the court reimburse him \$200.30, which he believes to be the amount of gift money deducted from his account to be paid towards his filing fees.

Unfortunately, no part of 28 U.S.C. § 1915 permits me to order any part of plaintiff's income exempt from withholding. The relevant portion of the statute reads, "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." 28 U.S.C. § 1915(b)(2). If the prisoner then files additional complaints or appeals, the amount owed increases as well. Newlin v. Helman, 123 F.3d 429, 436 (7th Cir. 1997), 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). Using the formula described above, plaintiff is required to pay 40% of his monthly income until the remaining balances for each of his cases are paid in full.

Moreover, in Lucien v. DeTella, 141 F.3d 773, 776 (7th Cir. 1998), the Court of Appeals for the Seventh Circuit ruled expressly that the word "income" in § 1915(b)(2) means more than "earned income."

Congress did not define the term "income" in § 1915(b), but it used several related terms: "income," "deposits," and "amount in the account." These seem

to be used as synonyms, which implies that “income” means “all deposits.” A prisoner therefore “shall forward 20% of whatever sums enter a prison trust account, disregarding the source. That some receipts are gifts or bequests from family members does not shelter them from § 1915(b)(2), as the prison seems to have supposed.

Because the law is settled in this circuit that gift money is not to be excluded from the definition of “income” an inmate might receive, there is no basis for plaintiff’s requests that this court enter an order exempting his gift money from collection or refund any of the money he has already paid towards the filing fees he incurred in these cases.

ORDER

IT IS ORDERED that plaintiff’s request that this court order prison authorities to exempt gift money from withholding under 28 U.S.C. § 1915(b)(2) and to refund payments received from gift money is DENIED.

Entered this 13th day of April, 2011.

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