

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

LARRY J DUANE SPENCER,

Plaintiff,

v.

ORDER

10-cv-288-bbc

JOSEPH L. SOMMERS, ANN SAYLES,
STUART A. SCHWARTZ, DAVID KNOLL,
CHRISTOPHER DUREN, PAUL NESSON JR,
TIMOTHY DAVID EDWARDS, JENNIFER HARPER,
GREGORY DUTCH, STAN KAUFMAN,
JAY LAUFENBERG, MARY JONES,
FRANK EARL RADCLIFF, ROY U. SCHENK,
CINDY S. GEOFFREY, MELISSA HARNESS,
JOHN RADOVAN, ROSA I AGUILU,
BRIAN BLANCHARD, GARY H. HAMBLIN,
JOHN PIER ROEMER, KAREN KRUGGER,
MARIANNE SIMPSON, ANA M. BOATWRIGHT,
TAMMY J. SIME, MS BURNS, MS RICHARDSON,
RANDALL HEPP, NANCEY GANTHER,
CAPT. KANNANBERG, CAPT GUARCEAU,
MR JAEGER, MS TEGELS, C.O. KRATKY,
SANDY K. MAGUIR-PETKE, C.O. RYBUCK, MS RICK,
TERRY L. SHUK, C.O. CORBIN, DAWON JONES,
JAMES ISAACSON, ROY LA BARTON GAY,
D.O. WATSON, TODD E. MEURER,
PEGGY L. NICHOLS, STACEY A. BIRCH,
BRENDA L. PETERSON, SHEILA D. PATTEN,
DOCTOR HANNULA, MR SWEENEY
and DEPARTMENT OF CORRECTIONS,

Defendants.

On July 28, 2010, I denied plaintiff Larry Spencer's motion to waive the initial partial payment in this case and dismissed his case without prejudice. I advised him that he could move to reopen this case by submitting a six-month trust fund account statement revealing an absence of periodic income for a full six-month period. On August 11, I denied his motion to reopen his case because the trust fund statement he submitted showed that he had the means to pay his initial partial payment in this case.

Now, plaintiff has filed a renewed motion to reopen his case. I understand him to be saying that he does not have regular deposits into his account because his income is being taken to pay state and federal court costs. However, regardless of how the deposits are used, his trust fund account statement shows that he had regular deposits into his account in the last six months.

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 is unable to pay the assessed amount because he owes other obligations. At this time I will deny plaintiff’s renewed motion to reopen his case because he has not shown that he has not had regular deposits to his trust fund account in the last six months.

ORDER

IT IS ORDERED that plaintiff Larry Spencer’s renewed motion to reopen this case, dkt. #30, is DENIED.

Entered this 7th day of September, 2010.

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