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

LARRY SPENCER,

     Petitioner,   ORDER

   v.   11-cv-09-bbc

JEFFREY PUGH, Warden,

     Respondent.

Petitioner Larry Spencer has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and requests leave to proceed *in forma pauperis*. He supports his request for leave to proceed *in forma pauperis* with an affidavit of indigency and a copy of his trust fund account statement for the six-month period immediately preceding the filing of his petition.

In determining whether a petitioner is indigent for the purpose of filing a § 2254 petition, this court calculates the average monthly deposits and the average monthly balances in the petitioner's prison account for the six-month period mentioned above. If 20% of the greater of these two figures is $5 or more, then the petitioner is not eligible for indigent status and must prepay all of the $5 filing fee. If 20% of the greater of these two figures is less than $5, the petitioner must prepay whatever portion of $5 the 20% calculation works out to be.

Applying this formula to petitioner, I find that he is able to pay at least a portion of the filing fee. According to the trust account statement, in the past six months petitioner's average monthly deposits have been $7.90. (His average monthly balance in his regular account is zero.) Twenty percent of this figure is $1.58. Accordingly, I will grant petitioner's application for leave to proceed *in forma pauperis* on the condition that he prepay $1.58.

ORDER

IT IS ORDERED that the petition of Larry Spencer for leave to proceed *in forma pauperis* is GRANTED on the condition that he prepay the amount of $1.58. Petitioner has until February 16, 2011 to pay this amount. If he fails to submit the partial filing fee by February 16, 2011, his petition may be dismissed for failure to prosecute it.

Entered this 25th day of January, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge