IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID IVEY,	)	**CASE NO. 4:07CV3242**
	)	
Petitioner,	)	
	)	**MEMORANDUM**
v.	)	**AND ORDER**
	)	
	)	
WILLIAM R. GIBSON,	)	
	)	
Respondent.	)	

Petitioner has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, an application to proceed in forma pauperis, and a copy of his institutional trust account statement. After reviewing the statement, I find that petitioner's average monthly income, as reflected in the trust account statement is $172.41.

Habeas corpus cases attacking the legality of a person's confinement require the payment of a $5.00 fee. 28 U.S.C. § 1914(a). The court has reviewed the application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a)(1)-(2). (The court recognizes that the provisions of 28 U.S.C. § 1915(b) do not apply to habeas cases. See *Malave v. Hedrick*, 271 F.3d 1139, 1139-40 (8th Cir. 2001).) Because the petitioner's trust account shows that the petitioner had an average monthly balance of $100 or more in the petitioner's account for the six-month period immediately preceding the filing of the petition, the court concludes that the petitioner must be required to pay the $5.00 filing fee because the petitioner has the financial ability to do so. See 28 U.S.C. § 1915(a). No further review of this case shall take place until the fee is paid.

IT IS THEREFORE ORDERED:

1.   The petitioner's application to proceed in forma pauperis (Filing No. 2) is denied;

2. The petitioner is granted until November 13, 2007 to pay the $5.00 filing fee. The petitioner is warned that if the fee is not paid as required, the court may dismiss this case without further notice;

3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: November 13, 2007: deadline for petitioner to pay $5.00 filing fee; and

4. No further review of this case shall take place until the filing fee is paid.

DATED this 11th day of October, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge