

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

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MICHAEL B. ELLSWORTH,

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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ORDER

13-cv-31-wmc

Plaintiff Michael Ellsworth, a prisoner at the Jackson Correctional Institution in Black River Falls, Wisconsin has filed a suit pursuant to 42 U.S.C. § 405(g) for review of a final decision of the Commissioner of Social Security denying plaintiff's application for social security disability benefits. Plaintiff seeks to commence this lawsuit without prepayment of the filing fees and costs or providing security therefor, pursuant to 28 U.S.C. § 1915. Plaintiff has provided a six-month trust fund account statement

In determining whether a prisoner litigant qualifies for indigent status this court applies the formula set forth in 28 U.S.C. § 1915(b)(1). According to this formula, a prisoner requesting leave to proceed *in forma pauperis* must prepay 20% of the greater of the average monthly balance or the average monthly deposits made to his prison account in the six-month period immediately preceding the filing of the complaint.

In this case, 20% of the average monthly deposits is \$26.79, but 20% of the average monthly balance is \$54.16. Because the greater of the two amounts is 20% of the average monthly balance, or \$54.16, that is the amount plaintiff will be assessed as an initial partial payment of the filing fee. If plaintiff does not have the money to make the initial partial payment in his regular account, he will have to arrange with prison authorities to pay some or

all of the assessment from his release account. This does not mean that plaintiff is free to ask prison authorities to pay *all* of his filing fee from his release account. The only amount plaintiff must pay at this time is the \$54.16 initial partial payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to insure that they are aware they should send plaintiff's initial partial payment to this court.

#### ORDER

Accordingly, IT IS ORDERED that Michael B. Ellsworth's petition for leave to proceed *in forma pauperis* is GRANTED on the condition that he pay an initial partial filing fee in the amount of, \$54.16. Plaintiff must pay the filing fee no later than February 22, 2013. If he fails to do so, this action may be dismissed for his failure to prosecute it. Upon receipt of plaintiff's payment, the clerk of court shall issue summonses and forward them to plaintiff's counsel for service.

Entered this 28<sup>th</sup> day of January, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge