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

MILLARD PATRICK II,

                    Petitioner,   ORDER

          v.   13-cv-230-wmc

STATE OF WISCONSIN,

                    Respondent.

In an order entered in this case on April 8, 2013, I told petitioner Millard Patrick, that before this court could consider his request to proceed *in forma pauperis* he would have to submit a trust fund account statement covering the six-month period preceding the filing of his petition so that an initial partial payment of the $5 filing fee could be assessed. Petitioner has submitted the requested statement.

In determining whether to allow a prisoner to proceed *in forma pauperis*, this court uses the following formula. First, the court determines petitioner's average monthly deposits and his average monthly balances for the six-month period mentioned above. If 20% of the greater of these two figures is $5 or more, the petitioner is not eligible for indigent status and will have to prepay all of the $5 filing fee. If 20% of the greater of these two figures is less than $5, he will be required to prepay whatever portion less than $5 has been calculated.

Applying this formula to petitioner, I find that he is able to pay the filing fee. According to the trust account statement, petitioner's average monthly balance is $56.63. Twenty percent of this figure is $11.33. Accordingly, I will deny petitioner's application for leave to proceed *in forma pauperis*. To proceed further on his habeas petition, petitioner must pay the $5 filing fee. If he fails to pay the fee by May 31, 2013, his petition will be dismissed for his failure to prosecute it.

ORDER

IT IS ORDERED that the petition of Millard Patrick for leave to proceed *in forma pauperis* is DENIED. Petitioner has until May 31, 2013 in which to pay the $5 filing fee. If he fails to submit the fee by May 31, 2013, his petition will be dismissed for failure to prosecute it.

Entered this 3rd day of May, 2013.

BY THE COURT:

/s/

PETER OPPENEER
Magistrate Judge