

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROCCO ZECCA,)
)
 Plaintiff,)
)
 v.) Civil Action No. 02-1431-SLR
)
 RAPHAEL WILLIAMS, JEANNIE LONG,)
 and MICHAEL BAAKO,)
)
 Defendants.)

Rocco Zecca, Wilmington, Delaware. Plaintiff, pro se.

Ophelia M. Waters, Deputy Attorney General, State of Delaware
Department of Justice, Wilmington, Delaware. Counsel for
Defendant Raphael Williams.

MEMORANDUM OPINION

Dated: April 11, 2003
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On August 1, 2002, plaintiff Rocco Zecca filed this action against defendants Raphael Williams, Jeannie Long and Michael Baako alleging civil rights violations under 42 U.S.C. § 1983 in that inadequate medical care violated his Eighth and Fourteenth Amendment rights. (D.I. 2) Currently before the court is defendants' motion to dismiss the complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 16) For the reasons stated below, defendants' motion is granted.

II. BACKGROUND

Plaintiff is an inmate within the Delaware Department of Correction, being held at the Multi-Purpose Criminal Justice Facility. (D.I. 16 at ¶ 1) Prior to his incarceration, plaintiff sustained injuries in two separate auto accidents and a work related incident. (Id. at ¶ 3) In addition, he was injured while a passenger on a DART bus that stopped suddenly. (Id.) Plaintiff sustained whiplash and neck pain from the first auto accident, muscle strain and contusions in the second auto accident, neck pain in the work related incident and sprained his shoulders, forearms and wrists in the bus accident. (Id.) As a result, plaintiff has received numerous medications, both prior to and during his incarceration, for pain caused by the injuries. (Id.) He has also been prescribed physical therapy treatments.

(Id.) Plaintiff alleges that "I've received a very minimum amount of medical treatment for my motor vehicle related injuries despite all my efforts [and] proof of injuries on file. The numerous letters [and] grievances to the Warden [and] medical director Dr. Michael Baako concerning this matter have failed to produce the treatment needed for me to be rehabilitated from these motor vehicle injuries to date." (D.I. 2 at 3)

III. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v.

Harrisburg County Police Dep't, 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

IV. DISCUSSION

To state a violation of the Eighth Amendment right to adequate medical care, plaintiff "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976); accord White v. Napoleon, 897 F.2d 103, 109 (3d Cir. 1990). Plaintiff must demonstrate: (1) that he had a serious medical need, and (2) that the defendant was aware of this need and was deliberately indifferent to it. See West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978); see also Boring v. Kozakiewicz, 833 F.2d 468, 473 (3d Cir. 1987). Either actual intent or recklessness will afford an adequate basis to show deliberate indifference. See Estelle, 429 U.S. at 105.

The seriousness of a medical need may be demonstrated by showing that the need is "'one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention.'" Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (quoting Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979)). Moreover, "where denial or delay

causes an inmate to suffer a life-long handicap or permanent loss, the medical need is considered serious." Id.

As to the second requirement, an official's denial of an inmate's reasonable requests for medical treatment constitutes deliberate indifference if such denial subjects the inmate to undue suffering or a threat of tangible residual injury. Id. at 346. Deliberate indifference may also be present if necessary medical treatment is delayed for non-medical reasons, or if an official bars access to a physician capable of evaluating a prisoner's need for medical treatment. Id. at 347. However, an official's conduct does not constitute deliberate indifference unless it is accompanied by the requisite mental state. Specifically, "the official [must] know . . . of and disregard . . . an excessive risk to inmate health and safety; the official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). While a plaintiff must allege that the official was subjectively aware of the requisite risk, he may demonstrate that the official had knowledge of the risk through circumstantial evidence and "a fact finder may conclude that a[n] . . . official knew of a substantial risk from the very fact that the risk was obvious." Id. at 842.

In the case at bar, plaintiff does not claim that he has been denied treatment for his condition. Plaintiff's complaint is based on a disagreement over the proper means of treatment and not a deliberate indifference to a medical need. Plaintiff may disagree with the medical treatment which he is receiving, however, decisions by a medical professional with respect to the appropriate course of treatment do not rise to a constitutional violation. See Boring, 833 F.2d at 473. "Where the plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eighth Amendment claim." Norris v. Frame, 585 F.2d 1183, 1186 (3d Cir. 1978) (citing Roach v. Kligman, 412 F. Supp. 521 (E.D. Pa 1976); see also Boring, 833 F.2d at 473 ("[C]ourts will not 'second-guess the propriety or adequacy of a particular course of treatment [which] remains a question of sound professional judgment.'").

Plaintiff's challenge to the medical treatment that he received does not rise to a constitutional violation, as plaintiff alleges only the denial of a specific course of treatment, and fails to suggest deliberate indifference by defendants. Plaintiff attaches to his complaint sixteen (16) different medical reports from examination over the past two years. In addition, plaintiff has attached ten different medical grievance forms. Plaintiff has written to the court that "medication of Percocet and Soma have proven effective for pain

relief from my particular injury complaint to date, but not provided by medical.” (D.I. 17) While it is clear that plaintiff disagrees with the course of treatment he is receiving, it is also clear that defendant has not been deliberately indifferent to plaintiff’s medical condition. Thus, plaintiff fails to state a claim for inadequate medical care pursuant to the Eighth Amendment.

V. CONCLUSION

For the reasons stated, defendants’ motion to dismiss is granted. An appropriate order shall issue.

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O R D E R

At Wilmington this 11th day of April, 2003, consistent with
the memorandum opinion issued this same day;

IT IS ORDERED that defendants' motion to dismiss (D.I. 16) is
granted.

Sue L. Robinson
United States District Judge