

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MICHAEL ANTHONY HOLLAND, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civ. No. 03-053-SLR  
 )  
 CORRECTIONAL MEDICAL SYSTEMS, )  
 FIRST CORRECTIONAL MEDICAL, )  
 STAN TAYLOR, AND ROBERT )  
 DAVENPORT )  
 )  
 Defendants. )

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Michael Anthony Holland, Smyrna, Delaware, Pro Se.

Stuart B. Drowos, Deputy Attorney General, State of Delaware  
Department of Justice, Wilmington, Delaware. Counsel for Stan  
Taylor.

Steven F. Mones, McCullough & McKenty, P.A., Wilmington,  
Delaware. Counsel for First Correctional Medical and Robert  
Davenport.

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**MEMORANDUM OPINION**

**Dated: February 11, 2004**  
**Wilmington, Delaware**

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

Plaintiff Michael Anthony Holland was incarcerated at Delaware Correctional Center ("D.C.C.") in Smyrna, Delaware, at the time of the filing of this complaint. On January 16, 2003, plaintiff filed a complaint with leave to proceed in forma pauperis, pursuant to 42 U.S.C. § 1983, against Correctional Medical Systems<sup>1</sup>, First Correctional Medical, and Robert Davenport (collectively the "F.C.M. defendants"), and Stan Taylor, alleging violations of the Eighth Amendment based on inadequate medical care. (D.I. 2) Plaintiff seeks compensatory damages for "all the wrong that has been done to him." (D.I. 2 at 4) On January 23, 2003, the court granted plaintiff's motion to proceed in forma pauperis and ordered plaintiff to pay a partial filing fee of \$2.26 within thirty days. (D.I. 4) On February 4, 2003, plaintiff authorized the agency holding him in custody to pay the required partial filing fee and also agreed to the subsequent payments pursuant to 28 U.S.C. § 1915(b). (D.I. 6) On February 25, 2003, the court ordered plaintiff to complete a United States Marshal-285 form summons for each defendant and the Attorney General of the State of Delaware, pursuant to Del.

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<sup>1</sup>Correctional Medical Systems ("C.M.S.") was the former health care provider during part of the relevant period in plaintiff's complaint, however, as of July 1, 2002, the DOC contracted with First Correctional Medical. As plaintiff failed to complete a United States Marshall form summons for C.M.S., the court will dismiss C.M.S. due to failure to effect service pursuant to Fed. R. Civ. P. 12(b)(5).

Code. tit. 10 § 3103(c). (D.I. 7) Plaintiff complied with the court's order and submitted a summons for Taylor on March 14, 2003. On March 18, 2003, the court notified plaintiff that it had not received a summons for the F.C.M. defendants. (D.I. 9) The court received these summons on March 18, 2003. On May 19, 2003, Taylor moved to dismiss the case pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted. (D.I. 15) On October 28, 2003, the F.C.M. defendants also filed a motion to dismiss for failure to state a claim upon which relief could be granted. (D.I. 19) On November 21, 2003, the court ordered plaintiff to answer defendants' motions to dismiss by December 22, 2003. Plaintiff has failed to comply. (D.I. 20) For the reasons that follow, the court grants defendants' motions.

## **II. BACKGROUND**

Plaintiff entered the D.C.C. in Smyrna, Delaware on September 11, 2002. (D.I. 1) While in custody, plaintiff alleges filing three medical grievances by placing them in the grievance box in the "W Building." (D.I. 2 at 2) The grievance officer then forwarded plaintiff's medical grievances to Supervisor Hampton on October 21, 2002. (Id.) According to plaintiff, Supervisor Hampton had until October 24, 2002 to respond to these grievances but plaintiff claims that, as of November 7, 2002, he had not received any response. (Id.)

Plaintiff, consequently, filed a complaint with this court on November 13, 2002. (Id. at 1)

Plaintiff's complaint alleges that, "Stan Taylor is responsible for all medical treatment at D.C.C. and D.O.C. and he's not doing his job by me not receiving proper medical treatment." (Id. at 3) Plaintiff contends that a lance procedure was performed, which generally is a procedure for relieving a boil or blister or similar minor dermatological condition.<sup>2</sup> (Id.) Plaintiff also alleges that Robert Davenport, a nurse at D.C.C., denied him medical treatment and failed to follow the orders of two doctors regarding his treatment. (Id.) In his complaint, plaintiff contends a second nurse and another inmate witnessed this denial of treatment. Plaintiff further alleges that Davenport threatened him. Plaintiff contends that he has documented each of the incidents. (Id.) Plaintiff was scheduled to be released from custody within thirty days of filing this complaint. At that time, plaintiff indicated that he would supplement his complaint with copies of his documentation. (Id.)

### **III. STANDARD OF REVIEW**

In analyzing a motion to dismiss pursuant to Rule 12(b)(6),

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<sup>2</sup>In section V of plaintiff's complaint, he alleges pain and suffering in his back and left foot. Consequently, the court infers that the lancing procedure involved one or both of these areas.

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). Finally, 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**

##### **A. Exhaustion of Administrative Remedies**

F.C.M. defendants and defendant Taylor argue that plaintiff did not exhaust his administrative remedies prior to filing this action. (D.I. 16 at ¶5, D.I. 19 at 3,4) The Prison Litigation

Reform Act ("PLRA") states:

(a) No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a) (2003). Before filing a civil action, a plaintiff-inmate must exhaust his administrative remedies, even if the ultimate relief sought is not available through the administrative process. See Booth v. Churner, 206 F.3d 289, 300 (3d Cir. 2000); see also Ahmed v. Sromovski, 103 F. Supp. 2d 838, 843 (E.D. Pa. 2000) (quoting Nyhuis v. Reno, 204 F.3d 65, 73 (3d Cir. 2000)). Moreover, the Delaware Department of Correction administrative procedures provide that

medical grievances be submitted to the [Inmate Grievance Chair], who will forward the grievance to the medical service contractual staff for review. The medical services contractual staff will attempt informal resolution of the matter. If such resolution fails, a Medical Grievance Committee ("MGC") hearing will be conducted, which hearing will be attended by the grievant and the [Inmate Grievance Chair]. If the matter is resolved at that stage, the case is closed; otherwise, the grievant is directed to complete the MGC Appeal Statement section of the written grievance and forward it to the [Inmate Grievance Chair].

Smullen v. Kearney, No.Civ.A.02-082-SLR, 2003 WL 21383727, at \*2 (D. Del. June 13, 2003) (quoting DOC Policy 4.4).

In the case at bar, plaintiff submitted three medical grievances, but failed to receive any response from Hampton. (D.I. 2 at 2) In Davis v. Prison Health Services, the court

heard a case involving similar facts regarding the submission of a grievance form. The inmate in Davis submitted a grievance form but, at the time of the filing of his complaint, the grievance had not yet been heard. Davis v. Prison Health Services, 2002 WL 237871, at 1 (D. Del. Feb. 05, 2002). Since the plaintiff pursued his administrative remedies by filing the grievance form and the defendants presented insufficient evidence to show that they had responded to the grievance, the court found that the inmate had exhausted his administrative remedies. Id. at 2. In the present case, the court concludes that plaintiff sufficiently pursued his administrative remedies by filing a grievance form and, therefore, exhausted his administrative remedies.

#### **B. Violation of the Eighth Amendment**

Defendants contend that plaintiff has failed to produce any evidence to support his claim of an Eighth Amendment violation. (D.I. 16 at ¶8, D.I. 19 at 4) 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); White v. Napoleon, 897 F.2d 103, 109 (3d Cir. 1990). Deliberate indifference is demonstrated when "prison authorities prevent an inmate from receiving recommended treatment for serious medical needs or deny access to a physician

capable of evaluating the need for such treatment.” Monmouth County Corral. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987). A prison official may be found to have violated an inmate’s Eighth Amendment rights only if the official knows and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. See Farmer v. Brennan, 511 U.S. 825, 837 (1994).

A medical need is “serious” if it 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.” Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979).

In this case, the court finds that plaintiff has not satisfied the requisite test to establish an Eighth Amendment inadequate medical care claim. Although plaintiff alleges in his complaint that he did not receive proper medical treatment and that Davenport has denied him medical attention, plaintiff has failed to allege the existence of a serious medical condition. Based upon plaintiff’s references to a lance procedure, the court can not infer that a serious medical condition was ignored or even present. Plaintiff has not alleged any facts which tend to show that his condition required a doctor’s attention.

Furthermore, plaintiff has failed to allege the dates on which the defendants listed failed to provide medical treatment. Therefore, the court grants defendants' motions to dismiss.

**V. Conclusion**

For the reasons stated, defendants' motions to dismiss for failure to state a claim for which relief can be granted are granted. (D.I. 16, 19) An appropriate order shall issue.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MICHAEL ANTHONY HOLLAND,            )  
  )  
                  Plaintiff,            )  
  )  
          v.                            )     Civ. No. 03-053-SLR  
  )  
C.M.S, F.C.M., STAN TAYLOR,        )  
and ROBERT DAVENPORT,            )  
  )  
                  Defendants.         )

**O R D E R**

At Wilmington this 11th day of February, 2004, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendant Taylor's motion to dismiss (D.I. 16) is granted.
2. Defendants F.C.M.'s motion to dismiss (D.I. 19) is granted.
3. On the court's own motion, plaintiff's complaint as to defendant Correctional Medical Services is dismissed for failure to effect service of process. Fed. R. Civ. P. 12(b)(5).

Sue L. Robinson  
United States District Judge