

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SHAKIR TAQI AHMAD :  
a/k/a TIMOTHY D. JONES, SR., :  
 :  
Plaintiff, :  
 :  
v. : Civ. Action No. 07-433-JJF  
 :  
CONTRACTED HEALTH SERVICES :  
and DOCTOR IONNA, :  
 :  
Defendants. :

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Shakir Taqi Ahmad a/k/a Timothy D. Jones, Sr., Pro se Plaintiff,  
Delaware Correctional Center, Smyrna, Delaware.

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MEMORANDUM OPINION

September 24, 2007  
Wilmington, Delaware

  
**Farnan District Judge**

Plaintiff Shakir Taqi Ahmad ("Ahmad"), an inmate at the Delaware Correctional Center ("DCC"), Smyrna, Delaware, filed this civil rights action pursuant to 42 U.S.C. § 1983. He appears pro se and was granted in forma pauperis status pursuant to 28 U.S.C. § 1915. (D.I. 5.)

For the reasons discussed below, the Court will dismiss without prejudice the Complaint as frivolous and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

#### **I. BACKGROUND**

Plaintiff alleges he has an on-going skin condition that covers his chest, back, stomach, and arms. He has been seen by four or five physicians, all who have prescribed similar medications. Plaintiff alleges the medications "have done nothing" and that the doctors refuse to send him to a dermatologist. Plaintiff was seen by Defendant Dr. Ionna ("Dr. Ionna") on April 16, 2007. Plaintiff alleges that Dr. Ionna prescribed the same medication as the other physicians had and when he explained this to her, Plaintiff was forced to leave the office and did not receive further attention or medication. He alleges his prison account was charged \$8.00 for medical services he did not receive.

Plaintiff seeks compensatory and injunctive relief. More

particularly, he seeks an order directing he be sent to a dermatologist and seeks financial compensation for scarring and mental frustration. Finally, he asks to be reimbursed the \$8.00 taken from his prison account for medical services.

## II. STANDARD OF REVIEW

When a litigant proceeds in forma pauperis, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. When a prisoner seeks redress from a government defendant in a civil action, 28 U.S.C. § 1915A provides for screening of the complaint by the Court. Both 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) provide that the Court may dismiss a complaint, at any time, if the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief. An action is frivolous if it "lacks an arguable basis either in law or in fact," Neitzke v. Williams, 490 U.S. 319, 325 (1989), and the claims "are of little or no weight, value, or importance, not worthy of serious consideration, or trivial." Deutsch v. United States, 67 F.3d 1080, 1083 (3d Cir. 1995).

In performing the Court's screening function under § 1915(e)(2)(B), the Court applies the standard applicable to a motion to dismiss under Fed. R. Civ. P. 12(b)(6). Fullman v. Pennsylvania Dep't of Corr., No. 4:07CV-000079, 2007 WL 257617 (M.D. Pa. Jan. 25, 2007) (citing Weiss v Colley, 230 F.3d 1027,

1029 (7<sup>th</sup> Cir. 2000). The Court must accept all factual allegations in a complaint as true and take them in the light most favorable to Plaintiff. Erickson v. Pardus, -U.S.-, 127 S.Ct. 2197, 2200 (2007); Christopher v. Harbury, 536 U.S. 403, 406 (2002). Additionally, a complaint must contain "'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, -U.S.-, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint does not need detailed factual allegations, however "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. at 1965 (citations omitted). The "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations in the complaint are true (even if doubtful in fact)." Id. (citations omitted). Because Plaintiff proceeds pro se, his pleading is liberally construed and his Complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. Erickson v. Pardus, -U.S.-, 127 S.Ct. 2197, 2200 (2007) (citations omitted).

### III. ANALYSIS

The Eighth Amendment proscription against cruel and unusual punishment requires that prison officials provide inmates with adequate medical care. Estelle v. Gamble, 429 U.S. 97, 103-105 (1976). However, in order to set forth a cognizable claim, an inmate must allege (i) a serious medical need and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need. Estelle v. Gamble, 429 U.S. at 104; Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999). A prison official is deliberately indifferent if he knows that a prisoner faces a substantial risk of serious harm and fails to take reasonable steps to avoid the harm. Farmer v. Brennan, 511 U.S. 825, 837 (1994). A prison official may manifest deliberate indifference by "intentionally denying or delaying access to medical care." Estelle v. Gamble, 429 U.S. at 104-05.

"[A] prisoner has no right to choose a specific form of medical treatment," so long as the treatment provided is reasonable. Harrison v. Barkley, 219 F.3d 132, 138-140 (2d Cir. 2000). An inmate's claims against members of a prison medical department are not viable under § 1983 where the inmate receives continuing care, but believes that more should be done by way of diagnosis and treatment and maintains that options available to medical personnel were not pursued on the inmate's behalf. Estelle v. Gamble, 429 U.S. 97, 107 (1976). Finally, "mere

disagreement as to the proper medical treatment" is insufficient to state a constitutional violation. See Spruill v. Gillis, 372 F.3d 218, 235 (3d Cir. 2004) (citations omitted).

Plaintiff's allegations are, that he disagrees with the type of treatment he is receiving and, that he should be sent to see a dermatologist. It is evident in reading his Complaint, that Plaintiff is receiving continuing medical care and treatment for his skin condition, albeit, not to his liking. Plaintiff does not have a constitutional right to determine what type of treatment he receives. Nor do allegations of negligence rise to the level of a constitutional violation. Accordingly, he has failed to state a claim upon which relief may be granted.

Additionally, Plaintiff's claim for reimbursement of the \$8.00 medical payment is not cognizable under § 1983. A prisoner's due process claim based on random and unauthorized deprivation of property by a state actor is not actionable under § 1983, whether the deprivation is negligent or intentional, unless there is no adequate post-deprivation remedy available. See Parratt v. Taylor, 451 U.S. 527, 542 (1981), overruled on other grounds by, 474 U.S. 327 (1986); Hudson v. Palmer, 468 U.S. 517, 533 (1984). Plaintiff has available to him the option of filing a common law claim for conversion of property. Inasmuch as Delaware law provides an adequate remedy for Plaintiff, he cannot maintain a cause of action pursuant to § 1983. See

Hudson, 468 U.S. at 535; Nicholson v. Carroll, 390 F. Supp. 2d 429, 435 (D. Del. 2005); Acierno v. Preit-Rubin, Inc., 199 F.R.D. 157 (D. Del. 2001) (other citations omitted).

Based upon the foregoing, the Court will dismiss without prejudice the Complaint as frivolous and for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

#### **IV. CONCLUSION**

For the reasons discussed above, the Court will dismiss, without prejudice, the Complaint for failure to state a claim upon which relief may be granted and as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Amendment of the Complaint would be futile. See Alston v. Parker, 363 F.3d 229 (3d Cir. 2004); Grayson v. Mayview State Hosp., 293 F.3d 103, 111 (3d Cir. 2002); Borelli v. City of Reading, 532 F.2d 950, 951-52 (3d Cir. 1976). An appropriate Order will be entered.

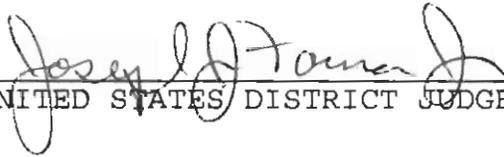
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CONTRACTED HEALTH SERVICES :  
and DOCTOR IONNA, :  
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Defendants. :

**ORDER**

NOW THEREFORE, at Wilmington this 24 day of September, 2007,  
IT IS HEREBY ORDERED that:

Plaintiff's Complaint is **DISMISSED** pursuant to 28 U.S.C. §  
1915(e)(2)(B) and 1915A(b)(1). Amendment of the Complaint would  
be futile.

  
UNITED STATES DISTRICT JUDGE