

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID STERNER,)
)
Plaintiff,)
)
v.) Civil Action No. 02-1439-KAJ
)
ROBERTA BURNS, M.D., SUSANN)
RICKARDS, RICK HEARNEY, Warden,)
PAUL HOWARD, Bureau Chief,)
)
Defendants.)

MEMORANDUM ORDER

I. Introduction

David R. Sterner, Plaintiff, is a *pro se* litigant who, at the time he filed his Complaint, was incarcerated at Sussex Correctional Institution (“SCI”). (Document Item [“D.I.”] D.I. 12 at ¶¶ 1-2.) The defendants are the Warden, Rick Kearney, and the Bureau Chief, Paul Howard, of SCI (collectively the “State Defendants”) and Roberta Burns, M.D., and Susann Rickards (collectively the “Medical Defendants”). Medical Defendants were employees of CMS, a private corporation that contracted with the State of Delaware to provide medical care to inmates. (D.I. 15 at ¶ 12.)

Plaintiff filed this action under 42 U.S.C. §1983, asserting that the defendants violated his Eighth Amendment right to be free from cruel and unusual punishment because he was “denied proper medical attention” for his broken arm. (D.I. 2.) Plaintiff seeks compensatory and punitive damages. (*Id.*)

Presently before the Court are the State Defendants and Medical Defendants Motions to Dismiss (D.I. 11; D.I. 15; the “Motions”). For the reasons that follow, the motions to dismiss are granted.

II. Background

Plaintiff alleges that he was taken into custody on February 20, 2002 with a broken arm (D.I. 12 at Exhibit A-1). On April 20, 2002, Plaintiff filed a grievance with the Inmate Grievance Chairman (“IGC”), requesting surgery on his arm. (*Id.*) Ms. Rickards filed a Grievance Form 584-E (“Informal Resolution”) on May 1, 2002, noting that Plaintiff’s arm was healing and that surgery was not recommended. (*Id.*) Plaintiff signed the Informal Resolution. (*Id.*)

On May 2, 2002, Plaintiff filed another grievance, again requesting surgery on his arm. He was advised by Ms. Rickards that CMS would perform surgery if an attending physician, Dr. Vanett, recommended it at Plaintiff’s next appointment. (*Id.*) This grievance, as well as grievances filed on May 6, May 21, May 31 and June 4, was withdrawn on June 8, 2002. (*Id.*)

Plaintiff filed another grievance with the IGC on July 6, 2002, requesting an examination by a neurologist that Dr. Vanett allegedly recommended. (*Id.*) In an Informal Resolution filed on July 10 and signed by Plaintiff on July 17, 2002, Ms. Rickards stated that certain tests recommended by Dr. Vanett had been submitted for approval, but had not yet been approved. (*Id.*)

On July 25, 2002, Plaintiff brought suit against State Defendants and Medical Defendants for denial of proper medical treatment for his broken arm. (*Id.*) He replicated his demands for consultation by an outside doctor through grievance forms

filed with the IGC on July 31 and August 1, 2002. (*Id.*) On or about September 3, 2002, Plaintiff was released from SCI. (D.I. 12 at 1-2.)

III. Discussion

Prior to bringing a claim under 42 U.S.C. § 1983, an inmate must first exhaust the administrative remedies available to him pursuant to the Prison Litigation Reform Act of 1996 (“PLRA”). Section 1997e(a) of the PLRA provides that:

[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as available are exhausted.

See also Nyhuis v. Reno, 204 F.3d 65, 67 (3d Cir. 2000); *Booth v. Churner*, 206 F.3d 289, 295 (3d Cir. 2000). Since 42 U.S.C. § 1997e(a) applies to all inmate claims except those challenging the fact of duration and confinement, Plaintiff’s complaint is subject to the exhaustion of remedies requirement under § 1997e(a).

Chapter Four of the State of Delaware Bureau of Prisons Procedure Manual, “Inmate Grievance Procedure,” establishes administrative procedures that an inmate must follow to file a medical grievance. An inmate must first file a grievance with the IGC. (D.I. 15, Ex. C at 6.) The grievance is then forwarded to the medical staff for review, and if action needs to be taken, the medical staff is required to attempt an informal resolution of the grievance with the inmate. (*Id.*)

The Medical Grievance Committee conducts a hearing if the grievance cannot be resolved informally, and if the hearing decision does not satisfy the inmate, the inmate must complete a Medical Grievance Committee Appeal Statement, which is then submitted to the Bureau Grievance Officer (“BGO”). (*Id.* at 6.) The BGO then

recommends a course of action to the Bureau Chief of Prisons, who renders a final decision. (*Id.* at 7.)

Plaintiff's institutional file reflects that he filed grievances concerning his medical treatment and that they were responded to by Ms. Rickards. (D.I. 12 at A-1.) However, there was no hearing, nor is there evidence that Plaintiff ever appealed any of his grievances under the Delaware Bureau of Prisons Procedure Manual. (D.I. 2; D.I. 18; D.I. 12 at ¶ 5; D.I. 15 at ¶ 10.) In *Booth*, the court held that prisoners must exhaust administrative remedies available to them prior to filing a section 1983 action, whether or not the remedies provide the inmate-plaintiff with the relief desired. 206 F.3d at 291 (citing *Nyhuis*, 204 F.3d at 78).

The policies underlying the exhaustion requirement are promoted by applying section 1997e(a) strictly, so that the agency involved is given the opportunity to discover and correct its own mistakes and so that judicial resources are appropriately conserved. *Nyhuis*, 204 F.3d at 75.

IV. Conclusion

Plaintiff failed to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997e. Accordingly,

IT IS HEREBY ORDERED that the motions to dismiss (D.I. 11 and D.I. 15) filed on behalf of State Defendants and Medical Defendants are GRANTED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

September 30, 2003
Wilmington, Delaware