

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICARDO MANLIWAT PARAS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 00-805-JJF
	:	
CORRECTIONAL MEDICAL SERVICES,	:	
et al.,	:	
	:	
Defendants.	:	

Ricardo Manliwat Paras, Smyrna, Delaware.
Pro Se Plaintiff.

Kevin J. Connors, Esquire of MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN,
Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

September 28, 2001
Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is the Motion to Dismiss on Behalf of Defendants, Correctional Medical Services, Dr. Jafri, Dr. Keith Ivens and Dr. Penserga (D.I. 10). For the reasons set forth below, the Court will grant the motion in part and will deny the motion in part.

BACKGROUND

Plaintiff Ricardo Manliwat Paras has been incarcerated at the Delaware Correctional Center in Smyrna, Delaware (“DCC”) since May 26, 1998. According to his Complaint, Plaintiff alleges that he suffers from diabetes, polio, a damaged sciatic nerve in his right leg, and that he has undergone two major back surgeries and two ankle surgeries. These ailments and afflictions require Plaintiff to use a cane when walking, and the damaged sciatic nerve requires him to wear an ankle brace. Plaintiff has been examined by the DCC’s doctors on numerous occasions, who are well aware of Plaintiff’s conditions and discomfort.

Plaintiff is supposed to receive medication for his various ailments, but has not received any such medication since April 4, 2000. Also on April 4, Plaintiff gave his ankle brace to the Administrative Office at the DCC’s infirmary, because the brace was worn out and he needed to get it replaced. On June 6, 2000, a new ankle brace was provided to Plaintiff, but the brace was ineffective and had to be returned to the infirmary because DCC security personnel had removed the metal pieces from it.¹ On July 11, 2000, Dr. Salvador Penserga (“Dr. Penserga”) filled out a request form to be sent

¹ In their motion, Defendants assume that Plaintiff’s factual allegations are listed in chronological order, and as a result, that June 6, 2000 was not the actual date that Plaintiff was

to an outside orthopedist for a new brace. On July 12, 2000, Dr. Keith Ivens (“Dr. Ivens”) examined Plaintiff and said that Plaintiff’s ailments could be properly cared for at the DCC. On July 22, 2000, Plaintiff asked a nurse at the DCC about his medication and his ankle brace, and told the nurse that Dr. Ivens had informed Plaintiff that the brace had been ordered. However, the nurse said that Plaintiff’s ankle brace had never been ordered and that Dr. Ivens had lied.

Plaintiff filed this Complaint on August 30, 2000 against Correctional Medical Services (“CMS”), the healthcare provider at the DCC, and against Dr. Ivens, Dr. Penserga, and Dr. Syed Jafri (all defendants collectively “Defendants”), for alleged violations of 42 U.S.C. § 1983. (D.I. 1). Specifically, Plaintiff alleges that Defendants’ denial of proper medical treatment constitutes cruel and unusual punishment and violates due process of law. Defendants filed the instant motion to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on November 29, 2000. (D.I. 10). Plaintiff filed papers in opposition to the motion on May 11, 2001, and since Defendants have failed to submit reply papers within the time frame permitted by the local rules, the Court will resolve the motion on the papers submitted.

STANDARD OF REVIEW

When a court analyzes a motion to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the factual allegations of the complaint must be accepted as true, and the court must draw all reasonable inferences in favor of the nonmoving party. Langford v. City of Atlantic City, 235

provided with a new ankle brace. (D.I. 10 at ¶ 12 & n.14). However, Plaintiff’s Complaint lists other events that are not in chronological order, (D.I. 1 at 6, ¶ 14). Accordingly, the Court will assume that Plaintiff’s listing June 6, 2000 as the relevant date is not an error.

F.3d 845, 847 (3d Cir. 2000). The only way a court can grant a Rule 12(b)(6) motion to dismiss is “if it appears that the [nonmoving party] could prove no set of facts” consistent with the allegations that would entitle it to relief. Id.

DISCUSSION

Defendants contend that Plaintiff’s Complaint fails to adequately allege personal involvement and/or deliberate indifference by the individual Defendants, and that, therefore, the Court should grant their motion to dismiss. To establish a Section 1983 violation for inadequate medical care, a prisoner must allege “acts or omissions [by prison authorities] sufficiently harmful to evidence deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 104 (1976). This standard is met only if the prison authorities deliberately deprive a prisoner of adequate medical care or when the prison authorities fail to act despite their knowledge of “a substantial risk of serious harm.” Daniels v. Delaware, 120 F. Supp. 2d 411, 426 (D. Del. 2000). To be liable under this standard, the prison authorities must have acted wilfully or with “subjective recklessness.” Id. at 427.

Plaintiff’s Complaint fails to allege any facts establishing Dr. Jafri’s involvement in the complained of conduct. In fact the only mention of Dr. Jafri in the Complaint is to name him as a Defendant. As a result, the Court concludes that Plaintiff fails to adequately allege deliberate indifference on the part of Dr. Jafri, and that Dr. Jafri must therefore be dismissed as a Defendant.

The only mention of Dr. Penserga in the Complaint is that he filled out the required request forms that were to be sent to an outside orthopedist. Although the organization of Plaintiff’s Complaint makes deciphering the sequence of the relevant facts difficult, reading all inferences in favor of Plaintiff, the Complaint can be read to suggest that Dr. Penserga filled out the requisite forms in front of Plaintiff, but then purposely refused to submit the forms to the outside orthopedist. Additionally, the Complaint can be construed as suggesting that Dr. Ivens had some involvement in depriving Plaintiff of this brace, and that Dr. Ivens intentionally lied when telling Plaintiff that a new brace had been ordered. Accordingly, the Court concludes that Plaintiff adequately alleges deliberate indifference by Dr.

Penserga and Dr. Ivens.² Therefore, the motion to dismiss as to Dr. Penserga and Dr. Ivens must be denied.

Defendants also contend that CMS must be dismissed as a Defendant. A private corporation responsible for providing medical services at a prison, such as CMS, cannot be held liable under the doctrine of respondeat superior for Section 1983 violations committed by its employees. Key v. Brewington-Carr, 2000 WL 1346688, at *29 (D. Del. Sept. 6, 2000); Miller v. Correctional Med. Sys., Inc., 802 F. Supp. 1126, 1131-32 (D. Del. 1992). However, CMS can be held liable for its policies or customs if they demonstrate deliberate indifference. Key, 2000 WL 1346688, at *29; Miller, 802 F. Supp. at 1131-32.

The Complaint fails to mention CMS other than to name it as a Defendant. The only allegation that can be construed as a custom or policy within the DCC is that security removed the metal pieces from Plaintiff's ankle brace. However, there is no suggestion in the Complaint that this was a custom or policy of CMS, and even if there was such a suggestion, the Complaint does not seek redress for the removal of the metal piece from the ankle brace, but rather, for the willful refusal to order Plaintiff a new ankle brace. As a result, the Court concludes that CMS must be dismissed as a Defendant.

CONCLUSION

For the reasons discussed, the Motion to Dismiss on Behalf of Defendants, Correctional Medical Services, Dr. Jafri, Dr. Keith Ivens and Dr. Penserga (D.I. 10) will be granted as to Dr. Jafri and CMS, but will be denied as to Dr. Ivens and Dr. Penserga.

An appropriate Order will be entered.

² The Court also concludes that these allegations sufficiently establish an intentional or reckless disregard of Plaintiff's federally protected rights. As a result, the Court concludes that Plaintiff's claim for punitive damages cannot be dismissed at this juncture.

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Civil Action No. 00-805-JJF

ORDER

At Wilmington this 28 day of September, 2001, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that the Motion to Dismiss on Behalf of Defendants, Correctional Medical Services, Dr. Jafri, Dr. Keith Ivens and Dr. Penserga (D.I. 10) is **GRANTED** as to Dr. Jafri and Correctional Medical Services, but is **DENIED** as to Dr. Ivens and Dr. Penserga.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE