

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DANA WILLIAMS, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 01-243-JJF
 :
 HEAD NURSE ROBERT and :
 C.M.S., :
 :
 Defendants. :

Dana Williams, Pro Se, Smyrna, Delaware.

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

MEMORANDUM OPINION

September 30, 2002
Wilmington, Delaware.

FARNAN, District Judge.

Presently before the Court is a Motion to Dismiss (D.I. 17) filed by Defendants Head Nurse Robert (correctly known as "Robert Hampton") and C.M.S. (correctly known as "Correctional Medical Services, Inc.") (collectively "Defendants"). Plaintiff, Dana Williams, an inmate at the Delaware Correctional Center ("D.C.C."), filed the instant action pursuant to 42 U.S.C. § 1983. (D.I. 2). For the reasons discussed, Defendants' Motion to Dismiss will be granted.

Background

Plaintiff Dana Williams is an inmate at the D.C.C. in Smyrna, Delaware. (D.I. 18 at 1). Defendant Robert Hampton is the Head Nurse for the C.M.S. at the D.C.C. (D.I. 18 at 1). Plaintiff alleges in his Complaint that Defendants failed to provide him with adequate medical care resulting in a violation of 42 U.S.C. § 1983. Defendants subsequently filed a Motion to Dismiss (D.I. 17) for failure to state a claim upon which relief may be granted.

STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may dismiss a complaint for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). The purpose of a motion to dismiss is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of

the case. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993).

When considering a motion to dismiss, a court must accept as true all allegations in the complaint and draw all reasonable factual inferences in the light most favorable to the plaintiff. Neitzke v. Williams, 490 U.S. 319, 326 (1989); Piecknick v. Pennsylvania, 36 F.3d 1250, 1255 (3d Cir. 1994). The Court is "not required to accept legal conclusions either alleged or inferred from the pleaded facts." Kost, 1 F.3d at 183. Dismissal is only appropriate when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45 (1957); In re Donald J. Trump Casino Sec. Litig., 7 F.3d 357, 368-69 (3d Cir. 1993), cert. denied, 114 S. Ct. 1219 (1994). Thus, the court may dismiss a complaint when the facts pleaded and the reasonable inferences drawn therefrom are legally insufficient to support the relief sought. See Pennsylvania ex rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir. 1988).

DISCUSSION

I. Failure To Provide Adequate Medical Care

Plaintiff alleges that he was denied adequate medical care. (D.I. 18 at 3). In order to establish an Eighth Amendment claim for the denial of medical treatment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate

indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104 (1976). Deliberate indifference is demonstrated by "the deliberate deprivation of adequate medical care or the defendant's action or failure to act despite his or her knowledge of a substantial risk of serious harm." Pew v. Connie, 1997 WL 717046, *4 (E.D. Pa. Nov. 14, 1997). Further, the medical condition must be "serious." Boring v. Kozakiewicz, 833 F.2d 468, 472 (3d Cir. 1987), cert. denied, 485 U.S. 991 (1988). Mere negligence in diagnosing or treating a medical complaint does not state a claim of deliberate indifference to a prisoner's medical needs. Id. (citations omitted). Rather, deliberate indifference requires a showing that the official acted willfully or with a subjective recklessness. Id. (citing Farmer v. Brennan, 511 U.S. 825, 842 (1994)).

Defendants contend that Plaintiff has no factual support for his claim that his serious medical condition was treated with deliberate indifference. (D.I. 18 at ¶6).

By his Complaint, Plaintiff contends that (1) Head Nurse Robert Hampton moved all female nurses to another section of the prison (D.I. 2 at 3); (2) Robert Hampton, instructed the nurses to ignore him (D.I. 2 at 3) and (3) he was denied treatment for his diabetic condition (D.I. 2 at 3). Plaintiff also describes an incident where Nurse "Rosemary" refused to test his sugar level, claiming that she was instructed by Head Nurse Robert

Hampton not to treat him. (D.I. 2). As a result, Plaintiff contends that his sugar level became very high. (D.I. 2).

When a claim fails to allege sufficient facts to support a legal claim, it can be dismissed. Fed. R. Civ. P. 12(b)(6). Although pro se complaints are liberally construed, pro se litigants must also plead sufficient facts in order to sustain a claim. Riddle v. Mondragon, 83 F.3d 1197, 1202 (10th Cir. 1996).

In this case the Court concludes, that even if Plaintiff's allegations are accepted as true, i.e. the failure to test Plaintiff's sugar level upon request, such allegations do not state a claim for deliberate indifference to Plaintiff's medical condition sufficient to sustain a constitutional violation. See e.g., Estelle v. Gamble, 429 U.S. 97 (1976) (stating that medical malpractice is not a constitutional violation); Durmer v. O'Carroll, 991 F.2d 64, 66 (3d Cir. 1993) (same). Accordingly, Defendants' Motion To Dismiss will be granted.

II. Failure To Exhaust Administrative Remedies

Defendants contend that Plaintiff failed to exhaust his administrative remedies, which is a prerequisite to asserting a prison condition § 1983 action. (D.I. 18 at 3). Defendants argue that failure to provide adequate medical treatment constitutes a prison condition. (D.I. 18 at 4).

The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) provides that:

No 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 are available to him are exhausted.

42 U.S.C. § 1997e(a). The Third Circuit requires that prisoners exhaust all administrative remedies available to them before they file a claim premised on prison conditions under § 1983. Nyhuis v. Reno, 204 F.3d 65, 67 (3d Cir. 2000). Prison conditions include the physical environment in which they live and the services provided to them. Booth v. Churner, 206 F.3d 289, 291 (3d. Cir. 2000).

By their motion, Defendants contend that Plaintiff's Complaint should be dismissed pursuant to The Prison Litigation Reform Act 42 U.S.C. § 1997e(a), for failure to exhaust administrative remedies. (D.I. 18 at 3-4). Additionally, Defendants argue that the prison has established a medical grievance procedure by which prisoners can report problems. (D.I. 18 at 4). Defendants contend that Plaintiff never exhausted the remedies available from the grievance procedure because he expected an immediate answer to the grievance he filed. (D.I. 18 at 4). Defendants respond that they were not given time to investigate and correct any mistakes. (D.I. 18 at 4).

Based on these facts, the Court concludes that Plaintiff did not exhaust his administrative remedies. Further, upon reviewing the evidence, it appears that the grievance that was submitted

did not state the same allegations Plaintiff asserts in the instant Complaint. (D.I. 2). Due to Plaintiff's failure to submit the allegations of the instant Complaint to the prison grievance procedure for medical complaints, the Court concludes that the Motion to Dismiss should be granted for failure to exhaust administrative remedies.

III. C.M.S

Defendants contend that C.M.S. cannot be held liable for the acts of its employees under the theory of respondeat superior in a §1983 action, because private corporations that provide medical services for a state cannot be held liable. Swan v. Daniels, 923 F.Supp. 626, 633 (D. Del. 1995); (D.I. 18 at 6). In order to assert a § 1983 violation premised upon respondeat superior Plaintiff would have to prove Defendants' personal involvement in the alleged wrong. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d. Cir. 1988). According to the instant Complaint (D.I. 2), Plaintiff does not claim that C.M.S. was personally involved with the alleged wrongs. Accordingly, the Court concludes that the Motion to Dismiss by Defendants C.M.S. must be granted.

CONCLUSION

For the reasons discussed, the Court concludes that Plaintiff's Complaint fails to state a claim upon which relief

can be granted, and Defendants' motions will be granted.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DANA WILLIAMS, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 01-243-JJF
 :
 HEAD NURSE ROBERT and :
 C.M.S., :
 :
 Defendants. :

O R D E R

At Wilmington this 30th day of September 2002, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (D.I. 17) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE