

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DANA WILLIAMS, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 01-284-JJF
 :
 ROSE MARY and C.M.S., :
 :
 Defendants. :

Dana Williams, Pro Se, Smyrna, Delaware.

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

MEMORANDUM OPINION

September 26, 2002
Wilmington, Delaware.

FARNAN, District Judge.

Presently before the Court is a Motion to Dismiss (D.I. 18) filed by Defendants Rosemary (correctly known as "Rosemary Leager") and C.M.S. (correctly known as "Correctional Medical Services, Inc.") (collectively "Defendants") and a Motion for a Temporary Restraining Order and Preliminary Injunction (D.I. 33) filed by the Plaintiff. 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). Plaintiff alleges that Defendants failed to provide him with adequate medical care. (D.I. 2). Additionally, Plaintiff alleges that Defendants retaliated against him for filing the instant action. (D.I. 34). To date, Defendants have not filed any response to Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction, therefore, the Court will proceed to resolve the merits of the parties' pending motions. For the reasons discussed, Defendants' Motion to Dismiss will be granted and Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction will be denied.

BACKGROUND

Plaintiff Dana Williams is an inmate at the D.C.C. in Smyrna, Delaware. (D.I. 18 at 1). Defendant Rosemary Leager is a nurse for the C.M.S. at the D.C.C. (D.I. 19 at 1). Plaintiff alleges that Defendants failed to provide him with adequate

medical care in violation of 42 U.S.C. § 1983. (D.I. 2 at 5)
Additionally, Plaintiff claims that Nurse Rosemary Leager retaliated against the Plaintiff for filing the instant action by instructing prison officials to harass him. (D.I. 34 at 2).

I. Defendant's Motion to Dismiss

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).

Failure To Provide Adequate Medical Care

To establish a claim for failure to provide adequate medical care, "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). In order to satisfy the deliberate indifference standard set forth in Estelle, a plaintiff must allege that the Defendants either acted with "reckless disregard" or "actual intent" to disregard medical conditions. Id. In order to prove "deliberate indifference" a plaintiff must show that the individual attending him consciously disregarded his serious medical condition. Farmer v. Brennan, 511 U.S. 825, 838 (1994). 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).

Defendants argue that there are no facts in the complaint which demonstrate that Nurse Rosemary Leager acted with deliberate indifference to Plaintiff's serious medical condition. (D.I. 19 at 3). Further, Defendants argue that Plaintiff has failed to state a cognizable legal claim. (D.I. 19 at 3).

Plaintiff responds that Nurse Rosemary gave him the wrong medication on three separate occasions which displayed a deliberate indifference and a reckless disregard for his health. (D.I. 24 at 4). As a result, Plaintiff claims he became dizzy and vomited. (D.I. 24 at 3). Further, Plaintiff alleges that Nurse Rosemary would not test his sugar. (D.I. 2 at 5). Plaintiff also claims that one evening he was having stomach pains and he went to the nurses' station where he claims he was not administered medical care. (D.I. 2 at 11). Lastly, Plaintiff contends that Nurse Rosemary treats the white inmates better than the black inmates. (D.I. 2 at 6).

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 construed liberally, they must still contain sufficient facts to state a legal claim. See Riddle v. Mondragon, 83 F.3d 1197, 1202 (10th Cir. 1996). The Court concludes that, even if administration of the wrong medication and failure to test for blood sugar occurred, than these actions would not amount to deliberate indifference to Plaintiff's serious medical condition sufficient to sustain a constitutional violation. Therefore the Motion to Dismiss will be granted.

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. 19 at 4-5). Additionally, Defendants argue that failure to provide adequate medical treatment constitutes a prison condition under 42 U.S.C. §1997e(a). (D.I. 19 at 5).

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 prisoners to exhaust all the 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). Thus, failure to provide adequate medical care falls within the service prong of the definition of prison conditions.

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. 19 at 4-5). Defendants argue that the prison has established a medical grievance procedure by

which prisoners can report any problems. (D.I. 19 at 5). Additionally Defendants contend that the grievance process occurs in several different phases, which includes a chance for appeal. (D.I. 19 at 5). Further, Defendants contend that Plaintiff never exhausted this procedure because he admits that the grievance was not resolved at the time he filed this action. (D.I. 19 at 6). Defendants also claim that they were not given the time to investigate and correct mistakes. (D.I. 19 at 5).

Plaintiff alleges that he did submit a grievance and that no action was taken. (D.I. 2 at 2). Additionally, Plaintiff notes that the prison grievance system does not provide for money damages, which he is seeking in this case and argues that the grievance procedure is inadequate. (D.I. 24 at 2).

At the time this action was filed, several steps were not completed under the prison grievance procedure. Accordingly, the Court concludes that the Motion to Dismiss should be granted for failure to exhaust administrative remedies.

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. 19 at 4). 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 in the alleged wrongs. Therefore, the Court concludes that the Motion to Dismiss by Defendants C.M.S. must be granted.

II. Temporary Restraining Order and Preliminary Injunction

Federal Rule of Civil Procedure 65(b) provides that a court may issue a temporary restraining order without notice to the adverse party, if the applicant can show that immediate or irreparable harm will result before the adverse party can be heard in opposition. Fed. R. Civ. P. 65 (b). Because Dana Williams served notice upon the Defendants, the Court will consider Williams' motion to be an application for a preliminary injunction.

When considering a motion for a preliminary injunction the court must decide: 1) whether the moving party has shown a reasonable probability of success on the merits; (2) whether the moving party will be irreparably harmed by the denial of relief; (3) whether granting the relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. Brian B. ex rel Lois B. v. Pennsylvania Dep't of Edu., 230 F.3d 582, 583 (3d Cir. 2000).

All four factors should weigh in favor of preliminary injunctive relief. See S& R. Corp. Jiffy Lube Int'l, Inc., 968 F.2d 371, 374 (3d Cir. 1992).

Given the fact that Plaintiff cannot demonstrate that Defendants acted with deliberate indifference, as discussed above, Plaintiff cannot show a reasonable probability of success on the merits. Additionally, Plaintiff cannot show that he will suffer irreparable harm by denial of relief because there is a grievance procedure in place at the prison. Accordingly, since Plaintiff cannot show reasonable likelihood of success on the merits or irreparable harm the Motion for a Preliminary Injunction will be denied.

CONCLUSION

For the reasons discussed, Defendants' Motion to Dismiss (D.I. 18) will be granted and Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction (D.I. 33) will be denied. Further, because Plaintiff's allegations fail to state a claim under section 1983, Plaintiff's Motion for leave to File an Amended Complaint (D.I. 21), Motion for Appointment of Counsel (D.I. 25), Motion to Amend Complaint (D.I. 27), Motion for Leave to File a Permissive Counterclaim (D.I. 29) and Motion to Consolidate Cases (D.I. 31) will be denied as moot. An appropriate Order will be entered.

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 Defendants. :

O R D E R

NOW THEREFORE, for the reasons stated set forth in the Memorandum Opinion issued this date, IT IS HEREBY ORDERED this 26th day of September 2002 that:

- (1) Defendants' Motion to Dismiss (D.I. 17) is **GRANTED**;
- (2) Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction is **DENIED**;
- (3) Plaintiff's Motion for Leave to File an Amended Complaint (D.I. 21) is **DENIED** as moot;
- (4) Plaintiff's Motion for Appointment of Counsel (D.I. 25) is **DENIED** as moot;
- (5) Plaintiff's Motion to Amend Complaint (D.I. 27) is **DENIED** as moot;
- (6) Plaintiff's Motion for Leave to File a Permissive Counterclaim(D.I. 29) is **DENIED** as moot;

(7) Plaintiff's Motion to Consolidate Cases (D.I. 31) is
DENIED as moot.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE