

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JERON D. BROWN, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 01-349-JJF
 :
 PAMULA F. MINOR, RAPHAEL :
 WILLIAMS, and CORRECTIONAL :
 MEDICAL SERVICES, INC., :
 :
 Defendants. :

Jeron D. Brown, Plaintiff, pro se, Wilmington, Delaware.

Kevin J. Connors, Esquire of MARSHALL, DENNEHEY, WARNER, COLEMAN
& GOGGIN, Wilmington, Delaware.
Attorney for Defendant Correctional Medical Services, Inc.

Gregory E. Smith, Esquire of the DEPARTMENT OF JUSTICE,
Wilmington, Delaware.
Attorney for Defendants Pamula F. Minor and Raphael Williams.

MEMORANDUM OPINION

May 14, 2002
Wilmington, Delaware

FARNAN, District Judge

Presently before the Court is a Motion To Dismiss Plaintiff's Complaint (D.I. 26) filed by Defendant, Correctional Medical Services, Inc. (hereinafter "CMS"). For the reasons set forth below, CMS' Motion To Dismiss (D.I. 26) will be granted.

I. BACKGROUND

Plaintiff is currently incarcerated at the Multi-Purpose Criminal Justice Facility (hereinafter "MPCJF") in Wilmington, Delaware and is a member of MPCJF's Key Program for drug treatment. (D.I. 39). By his Complaint, Plaintiff alleges, pursuant to 42 U.S.C. § 1983, that he is exposed to unreasonably high levels of second-hand tobacco smoke and, as a result, suffers from headaches, dizziness, and skin irritations (D.I. 2).

Prior to initiating this action, Plaintiff filed a grievance with CMS, requesting a no smoking policy in the Key Program housing areas and the daily use of an outdoor yard for Key program members. (D.I. 2, Ex. C). Plaintiff also attended a Medical Grievance Hearing with the Key Program Director for CMS. (D.I. 29 at 7). Because Plaintiff did not obtain a favorable result at the grievance hearing, Plaintiff alleges that he subsequently sent numerous letters to CMS requesting a transfer from the Key Program housing units. According to Plaintiff, he has initiated this action because CMS has failed to respond to his letters or make any attempt to provide a smoke-free

environment. (D.i. 29 at 5, 6).

In response to Plaintiff's Complaint, CMS has filed the instant Motion To Dismiss (D.I. 26).

II. DISCUSSION

CMS contends that Plaintiff's Complaint should be dismissed for Plaintiff's failure to exhaust his administrative remedies. (D.I. 27 ¶ 11-17). CMS contends that Plaintiff's grievance was not fully heard or resolved at the time this action was filed. (D.I. 27 ¶ 16). Specifically, CMS contends that, pursuant to Delaware Department of Corrections' Inmate Grievance Procedure, an inmate who is not satisfied with a Medical Grievance Hearing decision may appeal to the Bureau Grievance Officer. (D.I. 27 at ¶15-16; D.I. 27, Ex. C). Because Plaintiff failed to appeal the Medical Grievance Hearing decision prior to initiating this action, CMS contends that Plaintiff's Complaint should be dismissed. (D.I. 27 at ¶15-17). In response, Plaintiff requests that the Court forego the exhaustion of administrative remedies requirement, contending that the institutional grievance procedure is unfair and ineffective. (D.I. 29 at 6).

The Prison Litigation Reform Act (PLRA), section 1997e(a), provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or by any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as

available are exhausted." 42 U.S.C. § 1997e(a) (amended by Pub.L. 104-134, Title I, § 101(a), 110 Stat. 1321-71 (1996)).

After reviewing the record and applicable law on this issue, the Court concludes that Plaintiff has failed to exhaust his administrative remedies with regard to CMS. Specifically, Plaintiff has failed to allege that he appealed the Medical Grievance Hearing decision pursuant to the Inmate Grievance Procedure prior to commencing this action. (See D.I. 2). Instead, Plaintiff contends that the institutional grievance procedure is unfair and ineffective. Because futility does not excuse a plaintiff's requirement to exhaust all administrative remedies, the Court will grant CMS' Motion To Dismiss Plaintiff's Complaint (D.I. 26).¹ See Boyd v. Department of Corrections, 2000 WL 1073324, at *2 (E.D.Pa. August 2, 2000) (citing Nyhuis v. Reno, 204 F.3d 65, 71 (3d Cir. 2000)).

III. CONCLUSION

For the reasons discussed, the Court will grant CMS' Motion To Dismiss Plaintiff's Complaint (D.I. 26).

An appropriate Order will be entered.

¹ In support of its Motion To Dismiss, CMS also contends that Plaintiff's Complaint fails to state a claim upon which relief can be granted. (D.I. 27). Because the Court has concluded that Plaintiff has failed to exhaust his administrative remedies, the Court will not address CMS' additional argument.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JERON D. BROWN, :
 :
 Plaintiff, :
 :
 V. : Civil Action No. 01-349-JJF
 :
 PAMULA F. MINOR, RAPHAEL :
 WILLIAMS, and CORRECTIONAL :
 MEDICAL SERVICES, INC., :
 :
 Defendants. :

ORDER

At Wilmington this 14th day of May, 2002, for the reasons
set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendant CMS' Motion To Dismiss
(D.I. 26) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE