IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

Jeron D. Brown, Pro Se Plaintiff.

Gregory E. Smith, Esquire, Deputy Attorney General, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Defendants Pamula Minor and Raphael Williams.

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

MEMORANDUM OPINION

March 22, 2003
Wilmington, Delaware

FARNAN, District Judge

Pending before the Court are Plaintiff's Motion for Reconsideration of the Court's Memorandum Opinion (D.I. 45) and Order (D.I. 44) Granting the Motion to Dismiss filed by Defendant Correctional Medical Services, Inc., ("CMS")(D.I. 49) and Defendants Pamula Minor's and Raphael Williams' (the "State Defendants") Motion for Summary Judgment (D.I. 51). For the reasons discussed below, Plaintiff's Motion (D.I. 49) will be denied and the State Defendants' Motion (D.I. 49) will be granted.

BACKGROUND

Plaintiff filed this action while incarcerated at the Multi-Purpose Criminal Justice Facility ("MPCJF") in Wilmington, Delaware. (D.I. 2). At MPCJF, Plaintiff was a member of the Key Program for drug treatment, and as such, resided in an open dormitory with approximately one hundred and seventeen other inmates. Id. By his Complaint, Plaintiff alleges, pursuant to 42 U.S.C. § 1983, that while residing in the Key Program dormitory, he was exposed to unreasonably high levels of environmental tobacco smoke ("ETS"), which is commonly referred to as second-hand smoke. Id. As a result of his exposure to ETS, Plaintiff contends that he suffered from headaches, dizziness, lack of sleep, and eye, throat, and skin irritations. Id. Plaintiff contends his exposure to unreasonable levels of

ETS constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. Id.

DISCUSSION

A. Plaintiff's Motion for Reconsideration

In October 2001, CMS filed a Motion to Dismiss (D.I. 26) contending that Plaintiff had not exhausted his administrative remedies as required by the Prison Litigation Reform Act of 1996, 42 U.S.C. § 1997e(a). After receiving and considering Plaintiff's Answer Brief (D.I. 29), the Court issued a Memorandum Opinion (D.I. 45) and Order (D.I. 44) granting CMS's Motion to Dismiss. Plaintiff now moves the Court to reconsider its decision. (D.I. 49). However, Plaintiff's Motion raises no new arguments that were not previously considered and rejected by the Court. Having found no reason to depart from the reasoning of its prior decision, the Court will deny Plaintiff's Motion for Reconsideration (D.I. 49).[1]

B. State Defendants' Motion for Summary Judgment

Federal Rule of Civil Procedure 56(c) provides that a party is entitled to summary judgment where "the pleadings,

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[1] Having determined that CMS was properly dismissed from the case on May 14, 2002, the Court will deny as moot CMS's subsequently filed Motion for Summary Judgment (D.I. 56). However, were it to be found that CMS was not properly dismissed from the case, the Court's conclusion that there is no genuine issue of material fact as to the issue of deliberate indifference by the State Defendants is equally applicable to CMS.

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000).

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to show that there is more than:

> some metaphysical doubt as to the material facts.... In the language of the Rule, the nonmoving party must come forward with specific facts showing that there is a genuine issue for trial.... Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)(citations and punctuation omitted). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

In the instant case, the State Defendants move for summary judgment contending that there is no genuine issue of material

fact as to whether Plaintiff's exposure to ETS constituted cruel and unusual punishment.

> [W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well being.... The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs--e.g., food, clothing, shelter, medical care, and reasonable safety--it transgresses the substantive limits on state action set by the Eighth Amendment....

DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 199-200 (1989). For an inmate's exposure to ETS to rise to the level of cruel and unusual punishment, the Supreme Court has held that an inmate must prove both that objectively, he was exposed to unreasonably high levels of ETS, and that subjectively, prison officials were deliberately indifferent to his exposure. Helling v. McKinney, 509 U.S. 25, 35 (1993).

With respect to the objective factor, an inmate "must show that he himself is being exposed to unreasonably high levels of ETS." Id. at 36. The objective factor also "requires a court to assess whether society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk." Id.

In this case, Plaintiff resided in a large, albeit poorly ventilated, one-room dormitory with over one hundred other

inmates. (D.I. 2). MPCJF regulations prohibit anyone from smoking in the dormitory, (D.I. 53, A-1), although violations of that regulation do occur (D.I. 53, A-4 to 29). In Atkinson v. Taylor, et al., Civ. A. No. 99-562, Farnan, J. (D. Del. June 27, 2001), aff'd 316 F.3d 257 (3d Cir. 2003), the plaintiff's claim of unreasonable exposure to ETS was based the fact that he had a cell mate who smoked two packs of cigarettes per day. Because the plaintiff was within several feet of an inmate smoking forty cigarettes per day, this Court concluded there was a genuine issue of material fact as to whether he was exposed to an unreasonable level of ETS. Id. In this case, however, Plaintiff resided in a large dormitory with inmates who were subject to peer and institutional discipline for smoking. (D.I. 52 at A-3, A-4 to 29). Because the large dormitory space would allow smoke to dissipate and because inmates who smoked in violation of the prohibition would presumably have to do so discreetly, the Court concludes that Plaintiff's level of exposure to ETS was not unreasonable.[2]

With respect to the subjective factor of deliberate indifference, Plaintiff must show that Defendants knew he faced a substantial risk of serious harm and disregarded that risk by

[2] In reaching this conclusion, the Court thoroughly reviewed Plaintiff's submissions and noted that Plaintiff's father, Mr. Brice Brown, Jr., unfortunately died from cancer in 1995 due to tobacco use. (D.I. 2, Ex. B).

failing to take reasonable measures to abate it. Farmer v. Brennan, 511 U.S. 825, 847 (1994). This factor "should be determined in light of the prison authorities' current attitudes and conduct." Helling, 509 U.S. at 36 (stating the adoption of a smoking policy may bear heavily on the inquiry into deliberate indifference).

In the instant case, the Court concludes that because Defendants took reasonable measures to abate the harm posed to Plaintiff by ETS, there was no deliberate indifference. The Warden instituted MPCJF Standard Operating Procedure ("SOP") 40.08, which prohibits inmates from smoking in any indoor area. (D.I. 53, A-1). Inmates that violate SOP 40.08 are disciplined. (Id. at A-3, A-4 to 29). In fact, between the months of January and September 2001, ninety-four inmates residing in Plaintiff's dormitory were disciplined for violating SOP 40.08. Id. Plaintiff took part in thirteen disciplinary actions involving fellow inmates' violations of SOP 40.08. Id. Because Defendants instituted and enforced a no-smoking policy, the Court concludes that there is no genuine issue of material fact as to the issue of deliberate indifference. Accordingly, the State Defendant's Motion for Summary Judgment will be granted.

CONCLUSION

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

ORDER

At Wilmington this 22nd day of March 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

(1) Plaintiff's Motion for Reconsideration of the Court's Memorandum Opinion (D.I. 45) and Order (D.I. 44) Granting the Motion to Dismiss filed by Defendant Correctional Medical Services, Inc., (D.I. 49) is **DENIED**;

(2) The State Defendants' Motion for Summary Judgment (D.I. 51) is **GRANTED**;

(3) The Motion for Summary Judgment filed by Defendant Correctional Medical Services, Inc., is **DENIED** as moot;

(4) Plaintiff's Motion for Appointment of Counsel is **DENIED** as moot;

(5) Plaintiff's Motion to Compel Discovery and Written Deposition is **DENIED** as moot.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE