

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ARTURO LABOY, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 02-248 JJF  
 :  
 DELAWARE CORRECTIONAL CENTER, :  
 CORRECTIONAL MEDICAL SERVICE, :  
 INC., DR. KEITH IVENS, MELODY :  
 THORPE, and JANE DOE, :  
 :  
 Defendants. :

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Arturo Laboy, Smyrna, Delaware.  
Pro Se Plaintiff.

Kevin J. Connors, Esquire of MARSHALL, DENNEHEY, WARNER, COLEMAN  
& GOGGIN, Wilmington, Delaware.  
Attorney for Defendants Delaware Correctional Center,  
Correctional Medical Service, Inc., Dr. Keith Ivens, Melody  
Thorpe, and Jane Doe.

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**OPINION**

February 26, 2004

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is the Motion for Summary Judgment filed by Defendants Correctional Medical Services, Inc. ("CMS"), Dr. Keith Ivens ("Dr. Ivens"), and Melody Thorpe, N.P. ("Nurse Thorpe").<sup>1</sup> (D.I. 30.) For the reasons discussed, the Court will grant the Motion.

**BACKGROUND**

On April 4, 2002, the Plaintiff, Arturo Laboy, filed a complaint pursuant to 42 U.S.C. § 1983 (D.I. 2) alleging that Defendants failed to provide him with adequate medical treatment. Plaintiff alleges that he developed a painful rash from an allergic reaction he had to the laundry detergent used by the Delaware Correctional Center. Plaintiff alleges that Defendants did not provide him with adequate medical care for his rash and that this failure was "malicious and vindictive, as well as negligent." (D.I. 2.) Further, Plaintiff alleges that Defendants gave him three pills which caused him to vomit, experience heart palpitations, and feel a burning sensation throughout his body. (D.I. 38.) Plaintiff also alleges that Defendants did not properly treat his rash because the bandages they used to cover his rash, when removed, stripped his skin.

On November 12, 2003, the Court ordered Plaintiff to file an

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<sup>1</sup> Where appropriate, the Court will refer to Delaware Correctional Medical Service, Inc., Dr. Keith Ivens, Melody Thorpe, and Jane Doe collectively as the "Defendants."

answering brief to Defendants' Motion within twenty days of the Order. (D.I. 35.) By December 2, 2003, the Court had not received Plaintiff's answering brief. On December 3, 2003, Defendants submitted a letter to the Court, requesting the Court to grant their Motion based on Plaintiff's failure to file an answering brief. (D.I. 36.) The Court subsequently received an answering brief in the form of an affidavit from Plaintiff, dated December 2, 2003.

### **I. Parties' Contentions**

CMS, Dr. Ivens, and Nurse Thorpe contend that Plaintiff's answering brief was not timely, and therefore, summary judgment is appropriate. In addition, Defendants contend that they are entitled to summary judgment because Plaintiff has not exhausted his administrative remedies as required by 42 U.S.C. § 1997e. Defendants contend that Plaintiff may have filed a grievance with the Department of Corrections, but, that Plaintiff did not complete all the remaining steps available under the Department of Corrections Inmate Grievance Procedure. Defendants also contend that Plaintiff has not proven that either Dr. Ivens or Nurse Thorpe acted with the "reckless disregard" or "actual intent" necessary to satisfy the "deliberate indifference test" of Estelle v. Gamble, 429 U.S. 97 (1976), and Benson v. Cady, 761 F.2d 335 (7th Cir. 1985), and therefore, they are entitled to summary judgment. Further, Defendants assert that even if

Plaintiff can establish deliberate indifference, he has failed to demonstrate that his rash was a serious medical condition, a fact necessary to establish liability under Boring v. Zozakiewicz, 833 F.2d 468, 472 (3d Cir. 1987). With respect to CMS, Defendants contend that CMS can only be held liable for a policy or custom that demonstrates deliberate indifference to Plaintiff's serious medical needs, a fact, Defendants contend, Plaintiff has not proven. Finally, Defendants contend that CMS is entitled to summary judgment because CMS cannot be held responsible for the acts of its employees under a theory of respondeat superior in a Section 1983 action. (D.I. 40.)

In response, Plaintiff contends that he exhausted his administrative remedies. Plaintiff contends that he filed two grievances with the Inmate Grievance Office and that both were denied. As directed by the denial of the grievance, Plaintiff alleges that he wrote a letter to Director Perdue but that he received no response. With respect to Nurse Thorpe, Plaintiff contends that she acted with reckless disregard because she knew or should have known that the medication she administered to him would cause a serious adverse reaction. Plaintiff contends that his adverse reaction was serious and forced him to go to the hospital. Plaintiff contends that Dr. Ivens was the medical director of health services at the Delaware Correctional Center, and thus, had an obligation to supervise the medical staff.

Plaintiff maintains that Dr. Ivens failed to properly supervise his staff, and, that this dereliction of his duties led to Plaintiff's injuries. Finally, Plaintiff contends that CMS engaged in a policy that ignored, minimized, and neglected inmate medical complaints. (D.I. 38.)

#### **STANDARD OF REVIEW**

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and 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. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). Thus, to properly consider all of the evidence without making credibility determinations or weighing the evidence the "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent

that that evidence comes from disinterested witnesses.'" Id.  
(quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254  
(1986)).

To defeat a motion for summary judgment, Rule 56(c) requires  
the non-moving party to:

do more than simply show that there is some  
metaphysical doubt as to the material facts. . . . In  
the language of the Rule, the non-moving 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) (quoting Fed. R. Civ. P. 56). Accordingly, a  
mere scintilla of evidence in support of the non-moving party is  
insufficient for a court to deny summary judgment. Liberty  
Lobby, Inc., 477 U.S. at 252 (1986).

## DISCUSSION

### **I. Plaintiff Failed To Exhaust His Administrative Remedies**

Pursuant to 42 U.S.C. § 1997e(a) (1980), "[n]o action shall  
be brought with respect to prison conditions under § 1983 of this  
title . . . by a prisoner confined . . . until such  
administrative remedies as are available are exhausted." The  
Third Circuit requires a plaintiff to exhaust administrative  
remedies even if the grievance process would not provide him with  
the remedy he is seeking in his federal court action. Nyhuis v.

Reno, 204 F.3d 65, 71 (3d Cir. 2000) (stating that the Prison Litigation Reform Act precludes a futility exception to its mandatory exhaustion requirement). However, in order for Section 1997e to apply, the prisoner's complaint must concern prison conditions and the department of corrections must have an administrative procedure in place to remedy prisoner complaints. The Delaware Bureau of Prisons maintains an Inmate Grievance Review System.

18 U.S.C. § 3626(g) (2) defines prison conditions as conditions with respect to the conditions of the confinement. The Third Circuit has interpreted this language to relate "to the environment in which prisoners live, the physical conditions of that environment, and the nature of the services provided therein." Booth v. Churner, 206 F.3d 289, 294 (3d Cir. 2000). Plaintiff's claims relating to inadequate medical treatment are clearly directed at prison conditions, and therefore, Plaintiff is subject to Section 1997e's exhaustion requirements.

According to the Delaware Bureau of Prisons Inmate Grievance Procedures, an inmate who wants to file a medical grievance must submit Form #585 to the Inmate Grievance Chairperson (the "IGC") who will forward it to the appropriate medical staff for review. If, following a review by the medical staff, an informal resolution is not reached, a Grievance Committee hearing is held in a further attempt to resolve the dispute. If the Grievance

Committee hearing is unsuccessful, an inmate may file an MGC Appeal Statement, which is forwarded to the Bureau Grievance Officer (the "BGO"). The BGO will recommend a course of action to the Bureau Chief of Prisons (the "BCP"), who will render a final, non-appealable decision. Because the Court finds that Plaintiff did not exhaust the procedures available through the Inmate Grievance Procedures, the Court concludes that Plaintiff has failed to satisfy the requirements of Section 1997e.

Plaintiff filed two grievance forms pursuant to the Inmate Grievance Procedures. One form was a general grievance form, Form #584,<sup>2</sup> and the other a medical grievance form, Form #585. On the medical grievance form, Plaintiff requested compensation for negligent medical treatment. The IGC rejected Plaintiff's medical grievance on February 7, 2001, because, as stated in the rejection, "Inmates do not have the power to request or demand disciplinary action on staff . . . [W]rite a letter to that persons [sic] supervisor. In your case that is: Director Perdue." (D.I. 31 at exhibit A) (emphasis removed). Plaintiff complied with the instructions of the IGC's rejection and sent a letter to Director Perdue on February 11, 2001 (D.I. 38 at

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<sup>2</sup> This grievance dealt directly with the Delaware Correctional Center (the "DCC") and is irrelevant to the instant motion as the Court previously granted DCC's motion to dismiss. (D.I. 24.)

exhibit A)<sup>3</sup>; but, after receiving no response, took no further action until he filed the instant lawsuit. Thus, Plaintiff failed to exhaust his administrative remedies as required by Section 1997e.

As previously noted, an appeal to the BGO of the IGC's denial of Plaintiff's medical grievance was available; however, Plaintiff never filed this appeal. Accordingly, the Court concludes that Plaintiff's action is barred by the exhaustion requirement of Section 1997e, and therefore, the Court will grant Defendants summary judgment.

An appropriate Order will be entered.

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<sup>3</sup> The Court considers this exhibit, attached to Plaintiff's affidavit, as part of a timely filed opposition to Defendants' motion for summary judgment. Due to the unique circumstances of prisoners, a document is deemed "filed" at the moment of delivery to prison authorities for forwarding to the district court, and not when received by the clerk of court. See Houston v. Lack, 487 U.S. 266, 276 (1988); Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). If a plaintiff does not indicate the date on which he delivered the petition to prison authorities for mailing (as is the case here), the date on the document is treated as the date of filing. See, e.g., Maclary v. Snyder, C.A. No. 00-806 JJF, 2001 WL 34368337 at \*2 (D. Del. Feb. 7, 2001). Plaintiff's affidavit was dated and notarized on December 2, 2003. Therefore, the Court concludes that the affidavit was filed within the allotted twenty days.

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 Defendants. :

**ORDER**

At Wilmington, this 26th day of February, 2004, for the reasons discussed in the Opinion issued this date;

NOW THEREFORE, IT IS HEREBY ORDERED that the Motion Of Defendants Correctional Medical Services, Inc., Dr. Keith Ivens, and Melody Thorpe, N.P., For Summary Judgment (D.I. 30) is

**GRANTED**.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE

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**JUDGMENT IN A CIVIL CASE**

For the reasons set forth in the Court's Opinion and Order dated February 26, 2004;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of Defendants Correctional Medical Services, Inc., Dr. Keith Ivens, and Melody Thorpe.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE

Dated: February 26, 2004

ANITA BOLTON  
(By) Deputy Clerk