

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOHN ERIC SCHMITZ,)
)
Plaintiff,)
)
v.)
)
THOMAS CARROLL, DAVID HOLMAN,)
GEORGIA PERDUE, CORRECTIONAL)
MEDICAL SERVICES, ROBERT)
HAMPTON, and DR. RIZWAN,)
)
Defendants.)

Civil Action No. 02-517 GMS

MEMORANDUM AND ORDER

I. INTRODUCTION

John Eric Schmitz (“Schmitz”) is presently incarcerated at the Delaware Correctional Center (“D.C.C.”), which is located in Smyrna, Delaware. On June 10, 2002, Schmitz filed this *pro se* civil rights action pursuant to 42 U.S.C. §1983. In his complaint, he alleges that Thomas Carroll (“Carroll”), in his capacity as warden, David Holman (“Holman”), Georgia Perdue (“Perdue”), Correctional Medical Services (“C.M.S.”), Robert Hampton (“Hampton”), and Dr. Rizwan (“Rizwan”) failed to provide adequate medical treatment for his chronic myofacial pain syndrome by refusing to provide him with a new egg crate mattress. Schmitz is seeking both punitive and compensatory damages from the defendants. Presently before the court is C.M.S.’ motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). For the following reasons, the court will grant this motion.

II. BACKGROUND

Schmitz alleges that on May 27, 1994, he had surgery in order to remove cancer from his back. According to Schmitz, this surgery led to various side effects, including chronic myofacial

pain syndrome. Schmitz further alleges that he “received continuous treatment for this syndrom[e] until his arrival at the Delaware Correctional Center in 1997.” At that time, the D.C.C. medical department changed his treatment by prescribing him a foam egg crate mattress. Schmitz continued to receive prescriptions for replacement mattresses until September 2001, when his request for a new egg crate was “denied by security.” Schmitz contends that from September 2001 until January 2002, he unsuccessfully continued his attempts to obtain a new egg crate. Furthermore, he asserts that Dr. Trivedi prescribed oral pain medication and noted in his medical records that “Correctional Medical Services Supervisor Georgia Perdue’s decision is pending on the egg crate mattress.”

Schmitz alleges that on February 22, 2002, he filed grievances with Georgia Perdue of C.M.S. and through the prison’s standard grievance procedures. At the time he filed the current complaint, however, he concedes that no action had been taken on either grievance.

III. STANDARD OF REVIEW

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) may present either a facial or factual challenge to subject matter jurisdiction. *Mortensen v. First Fed. Savings and Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977). The present motion makes a facial challenge to the complaint because C.M.S.’ arguments are based solely upon the application of legal principles to the facts as alleged in the complaint. Such a motion requires the court to consider the allegations of the complaint as true and to make all reasonable inferences in the plaintiff’s favor. *See id.*

The purpose of a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the

case. *See Kost v. Kozakiewicz*, 1 F.3d 183 (3d Cir. 1993). Thus, as in the case of a Rule 12(b)(1) motion, the court must accept the factual allegations of the complaint as true. *See Graves v. Lowery*, 117 F.3d 723, 726 (3d Cir. 1997); *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996). In particular, the court looks to “whether sufficient facts are pleaded to determine that the complaint is not frivolous, and to provide defendants with adequate notice to frame an answer.” *Colburn v. Upper Darby Tp.*, 838 F.2d 663, 666 (3d Cir.1988). However, the court need not “credit a complaint’s ‘bald assertions’ or ‘legal conclusions’ when deciding a motion to dismiss.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3rd Cir.1997). A court should dismiss a complaint “only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *See Graves*, 117 F.3d at 726; *Nami*, 82 F.3d at 65 (both citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Thus, in order to prevail, a moving party must show “beyond doubt that the plaintiff can prove no set of facts in support of his claim [that] would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

IV. DISCUSSION

C.M.S. now seeks to dismiss Schmitz’s claims because he has failed to exhaust his administrative remedies. The Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a), states that:

[n]o 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 available are exhausted.

The Third Circuit Court of Appeals has held that the term “prison conditions” applies 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, 291 (3d Cir. 2000); *see also*

18 U.S.C. § 3626(g) (defining “prison conditions” as “. . . the effects of actions by government officials on the lives of persons confined in prison . . .”). In the present case, Schmitz’s allegations concerning C.M.S.’ failure to provide him with his prescribed egg crate mattress go to the nature of services provided in his environment. Therefore, Schmitz must first exhaust all the administrative remedies available to him before he may properly bring this suit.

In his complaint, Schmitz acknowledges that there is a prisoner grievance procedure in place at the D.C.C. The policy behind the Delaware Department of Corrections Inmate Grievance Procedure (“IGP”) is to ensure that “[e]very inmate will be provided a timely, effective means of having issues brought to the attention of those who can offer administrative remedies before court petitions can be filed.” Def.’s Mot. Ex. C at II. In order to be consistent with this policy, the IGP provides a three-step process for medical grievances. First, a medical grievance is submitted to the Inmate Grievance Chairperson. The Chairperson forwards it to the medical staff for review and informal resolution with the inmate. If the grievance is not resolved, a Medical Grievance Committee hearing results. If the grievance is still not resolved, the inmate may appeal to the Bureau Chief of Prisons for a final decision. *See id.* at 5 (providing procedure for medical grievances).

Schmitz states that on February 22, 2002, he filed identical grievances with C.M.S. and through the standard inmate grievance process. Both of these grievances addressed his medical treatment. Schmitz concedes, however, that neither of his grievances had been addressed as of the time he filed his complaint in the present action. Thus, according to Schmitz’s complaint, his grievance concerning C.M.S. was filed, but never heard. Taking Schmitz’s allegations as true, then, it is clear that Schmitz has not pursued his administrative remedies to a final decision, nor

does he allege that he has done so. At best, Schmitz has only completed the first step of the IGP by filing a grievance.

Therefore, the court concludes that Schmitz failed to exhaust his administrative remedies prior to filing his section 1983 action. The court's decision, however, will not prevent Schmitz from pursuing his administrative remedies at the D.C.C., assuming they are not time-barred. If he is not satisfied with the final result, he may then refile his complaint in federal court.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. C.M.S.' Motion to Dismiss (D.I. 21) is GRANTED.

Dated: April 2, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE