

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DARRYL M. EVANS,)
)
 Plaintiff,)
)
 v.) C.A. No. 03-870-KAJ
)
)
 FIRST CORRECTION MEDICAL,)
 DR. JOHN DOE, and DOROTHY)
 MCCLARY,)
)
 Defendants.)

MEMORANDUM ORDER

Before the Court are Darryl M. Evans' ("Plaintiff") Motions for Appointment of Counsel. (Docket Item [D.I.] 7, 9; the "Motions".) For the reasons that follow, Plaintiff's Motions are denied.

On September 10, 2003, Plaintiff filed a Complaint against First Correction Medical, Dr. John Doe¹, and Nurse Dorothy McClary ("Defendants"). (D.I. 2.) Plaintiff alleges that he was neglected by Defendants throughout the course of his medical treatment. (*Id.*) Plaintiff also alleges that Defendants inappropriately distributed prescription medicines to him as part of his treatment. (*Id.*) Plaintiff filed his Motions on September 26, 2003 and October 8, 2003. (D.I. 7, 9.) In support of the Motions, Plaintiff argues that the appointment of counsel would serve the interests of justice because he was incarcerated and had no legal advisors in the correctional facility. (*Id.*) However, Plaintiff has since been released from incarceration. (D.I. 10.)

A plaintiff has no constitutional or statutory right to the appointment of counsel in a civil

¹ After filing his complaint, Plaintiff informed the Court that Dr. John Doe is Dr. Jose Aramburo. (D.I. 14.)

case. *See Parham v. Johnson*, 126 F.3d 454, 456-57 (3d Cir. 1997); *Tabron v. Grace*, 6 F.3d 147, 153-54 (3d Cir. 1993). Under certain circumstances, the Court may in its discretion appoint an attorney to represent an indigent civil litigant. *See* 28 U.S.C. § 1915 (e)(1).

However, in *Tabron* and again in *Parham*, the Third Circuit Court of Appeals articulated the standard for evaluating a motion for appointment of counsel filed by a *pro se* plaintiff. Initially, the Court must examine the merits of a plaintiff's claim to determine whether it has some arguable merit in fact and law. *See Parham*, 126 F.3d at 457 (citing *Tabron*, 6 F.3d at 157); *accord Maclin v. Freake*, 650 F.2d 885, 887 (7th Cir. 1981) (per curiam) (cited with approval in *Parham* and *Tabron*). Only if the Court is satisfied that the claim is factually and legally meritorious, should it then examine the following factors: (1) the plaintiff's ability to present his own case; (2) the complexity of the legal issues; (3) the extensiveness of the factual investigation necessary to effectively litigate the case and the plaintiff's ability to pursue such an investigation; (4) the degree to which the case may turn on credibility determinations; (5) whether the testimony of expert witnesses will be necessary; and (6) whether the plaintiff can attain and afford counsel on his own behalf. *See Parham*, 126 F.3d at 457-58 (citing *Tabron*, 6 F.3d at 155-56, 157 n.5). This list, of course, is illustrative and, by no means, exclusive. *See id.* at 458. Nevertheless, it provides a sufficient foundation for the Court's decision.

While Plaintiff's claim may not be frivolous within the meaning of 28 U.S.C. § 1915 (e)(2)(B), I do not believe that Plaintiff meets the remaining *Parham* and *Tabron* factors. First, Plaintiff has stated his case in a reasonably clear and concise manner without legal assistance thus far. Second, the issues, as currently presented, are not legally or factually complex. Third, it appears from the allegations and the record before the Court that he does not need the assistance

of counsel to gather facts to support his claim. Although the case may turn on credibility determinations, that factor alone does not determine whether counsel should be appointed. *See Parham*, 126 F.3d at 460 (“While the case ultimately may have relied upon credibility, it is difficult to imagine a case that does not.”). Based on the current record, it is questionable whether the testimony of expert witnesses will be required for this case. Finally, though Plaintiff may have been unable to attain or afford counsel while he was incarcerated, he has since been released and is therefore in a better position to obtain the advice of legal counsel and access legal materials than he was while he was incarcerated. Thus, the Court declines to appoint counsel at this stage in the litigation.

For the reasons set out above, IT IS HEREBY ORDERED that Plaintiff’s Motions for Appointment of Counsel (D.I. 7, 9) are DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

June 15, 2004
Wilmington, Delaware