

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DARRYL M. EVANS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 03-870-KAJ  
 )  
 )  
 FIRST CORRECTIONAL MEDICAL, )  
 DR. JOSE ARAMBURO, )  
 and Ms.MCCLARY, )  
 )  
 Defendants. )  
 )

**MEMORANDUM ORDER**

I. INTRODUCTION

Darryl M. Evans (“Plaintiff”), an inmate in the Delaware correctional system, brings this action against First Correctional Medical, Inc., Dr. Jose Aramburo and Ms. Dorothy McClary (collectively “Defendants”) under 42 U.S.C. § 1983, alleging violations of the Eighth Amendment based on neglect and improper medical treatment. (D.I. 2, 14) Presently before me is Defendants’ Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (D.I. 20). The court has jurisdiction pursuant to 28 U.S.C. § 1331. For the reasons that follow, I will grant Defendants’ Motion to Dismiss.

II. BACKGROUND

Plaintiff is an inmate at the Central Violation of Probation Center in Smyrna, Delaware. (D.I. 19 at 1.) He alleges civil rights violations against Defendants in connection with improper treatments for a coccyx injury as well as complications arising from blood pressure medication. (D.I. 2 at 2-8.) Although Plaintiff filed three grievances

concerning Defendants' conduct, he admits that only one has been resolved and two are still pending. (*Id.* at 2.) Plaintiff filed his complaint on September 10, 2003, requesting "\$300,000 for neglect, pain and suffering and inappropriate distribution of medical prescriptions." (D.I. 2) On November 2, 2004, Defendants filed their motion to dismiss on the grounds that Plaintiff has failed to exhaust administrative remedies and has failed to state a claim upon which he may recover. (D.I. 20)

### III. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. *Trump Hotels & Casino Resorts, Inc. V. Mirage Resorts, Inc.*, 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." *Id.* "Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally." *Hyson v. Correctional Medical Services, Inc.*, 2003 WL 292085, \*2 (D.Del. 2003)(citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)). The moving party has the burden of persuasion in a motion to dismiss under Rule 12(b)(6). See *Kehr Packages, Inc. V. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991).

#### IV. DISCUSSION

In the case at bar, Defendants argue that Plaintiff did not exhaust his administrative remedies prior to filing this action. (D.I. 20) Under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a),<sup>1</sup> an inmate in a correctional system must exhaust all administrative remedies prior to filing a civil action on a denial of medical services claim. *Booth v. Churner*, 206 F.3d 289, 295 (3d. Cir. 2000), *cert. granted*, 531 U.S. 956 (2000), *aff'd*, 121 S. Ct. 1819 (2001)); *see id.* at 300 (stating that even though prison's internal grievance procedure cannot grant monetary damages relief, plaintiff-inmate must still exhaust the prison's administrative remedies). A failure to exhaust all administrative remedies is a sufficient basis for granting a motion to dismiss under Rule 12(b)(6). *See* 42 U.S.C. § 1997e(c)(1); *Booth*, 206 F.3d 289, 300 (stating holding of case).

Here, the record indicates that Plaintiff has failed to exhaust his administrative remedies. Plaintiff previously filed three grievances in accordance with the prisoner grievance procedure in the Delaware correctional system. (D.I. 2 at 2.) He admits in his complaint that although the first grievance was partially taken care of, "the second and third are pending." (*Id.*) Furthermore, there is no other evidence that would support a finding that any of Plaintiff's grievances had been resolved prior to the filing of his

---

<sup>1</sup>The Prison Litigation Reform Act provides, in pertinent part:  
No 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 are available are exhausted.

42 U.S.C. § 1997e(a).

complaint. Because the record indicates that Plaintiff has failed to exhaust his administrative remedies, Defendants' motion to dismiss must be granted.<sup>2</sup>

Accordingly, IT IS HEREBY ORDERED that Defendants' motion to dismiss (D.I. 20) is GRANTED.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

November 29, 2004  
Wilmington, Delaware

---

<sup>2</sup>Defendants also argue that Plaintiff's complaint should be dismissed, in the alternative, because Plaintiff cannot prove the relevant standard for a civil rights claim: "deliberate indifference to a serious medical need." (D.I. 20 (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976))). Because Plaintiff's case is dismissed for failure to exhaust his administrative remedies, I need not reach the merits of this second argument.