IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIAN K. DENNIS,

Plaintiff,

v.

OPINION AND ORDER

21-cv-87-wmc

DR. SALAM SYED,

Defendant.

Plaintiff Brian Dennis, who is representing himself, contends that Dr. Salam Syed failed to treat his chronic and severe back pain during his incarceration at the Dane County Jail in violation of the Fourteenth Amendment. Defendant has filed a motion for summary judgment, contending that his treatment of plaintiff's back pain was objectively reasonable and, therefore, constitutional. Because plaintiff neither responded to defendant's proposed findings of fact nor proposed his own findings, the court has accepted defendant's proposed findings of fact as true. (Dkt. #37, at 4 ("Motions for Summary Judgment," § II.C); Fed. R. Civ. P. 56(e)(2).) Even viewing these facts in the light most favorable to plaintiff, *Yanick v. Hanna Steel Corp.*, 653 F.3d 532, 543 (7th Cir. 2011), the court agrees that no reasonable jury could find the defendant's conduct was objectively unreasonable. Accordingly, defendant's motion for summary judgment will be granted.

UNDISPUTED FACTS

Plaintiff Brian Dennis was held as a pretrial detainee at the Dane County Jail from July 31, 2020, to March 23, 2021. Upon entering the jail, Dennis underwent a medical

screening at which he reported having a degenerative joint disease and multiple back surgeries. On August 3, Dennis asked a nurse if he could have a second mattress or something to help him sleep better with his chronic back pain. That nurse told Dennis to submit a medical request to the Health Services Unit ("HSU") for treatment. The nurse also helped Dennis complete a release form to obtain medical records so that HSU staff could evaluate his medical history. In the interim, Dennis was given acetaminophen for pain and an extra blanket to support his back while sleeping.

HSU received Dennis's medical records on August 11, 2020, which confirmed his back surgery in 2006. Two days later, Dennis again asked for a second mattress, but HSU staff responded that a doctor had yet to place an order for an extra mattress. Dennis asked HSU staff for a second mattress again on December 10, 2020, and he was again told that no doctor had ordered a second mattress for him. HSU staff directed Dennis to fold up his second blanket for back support.

At this point, neither the medical records nor the parties' submissions indicate whether defendant or any other doctor had reviewed Dennis's request for an extra mattress as he had not yet requested to be seen nor been evaluated by a doctor. However, on December 15, 2020, Dennis did submit a request to see a doctor for his back pain, and the next day Dennis was seen by Dr. Syed. During that visit, Dennis reported that he had chronic back pain for which he had previously been taking morphine and hydrocodone. In his medical notes on December 15, Dr. Syed chronicled Dennis's report of a chronic back condition, but also that Dennis was not complaining about any new symptoms. While

Syed denied the request for a double mattress, he ordered Naproxen and Tylenol for Dennis's back pain.

On January 16, 2021, Dr. Syed renewed Dennis's Naproxen for an additional 30 days. Dennis filed this lawsuit on February 2, 2021. A couple of weeks after filing suit and the expiration of the renewed Naproxen prescription, Dennis saw Syed again, complained that his back pain was worse at night, and once again requested a double mattress. Instead, Syed switched Dennis's pain medication from Naproxen to Meloxicam, as well as prescribed Dennis another 30 days of Tylenol.

OPINION

Plaintiff contends that defendant Syed's treatment of his reported back pain was unreasonable because he failed to: (1) conduct an examination of his back after he complained about chronic back problems; and (2) prescribe stronger pain medication or a double mattress to treat his back pain. Summary judgment on these claims is only proper if no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). If a reasonable jury could find for plaintiff, summary judgment is inappropriate. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–325 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–49 (1986).

Because plaintiff was a pretrial detainee during the relevant time, plaintiff's claim is governed by the Due Process Clause of the Fourteenth Amendment. *Hardeman v. Curran*, 933 F.3d 816, 823 (7th Cir. 2019); *Miranda v. Cty. of Lak*e, 900 F.3d 335, 352 (7th Cir. 2018). To succeed on his claim, plaintiff must prove that: (1) he had an objectively serious

medical condition; (2) defendant made an intentional or reckless decision regarding his medical care; (3) defendant's actions were objectively unreasonable; and (4) those actions caused plaintiff harm. *Cirves v. Syed*, No. 19-CV-725-JDP, 2022 WL 7458760, at *3 (W.D. Wis. Oct. 13, 2022) (citing *Gonzalez v. McHenry Cnty., Illinois*, 40 F.4th 824, 828 (7th Cir. 2022). Defendant seeks summary judgment only on the issue of objective unreasonableness, so the court will focus on that question.

In assessing whether a defendant's response to a serious medical need was objectively unreasonable, the court must consider the totality of facts and circumstances surrounding the defendant's care decision. *McCann v. Ogle Cnty., Illinois*, 909 F.3d 881, 886 (7th Cir. 2018). Plaintiff must show that "a reasonable [doctor] in the [defendant's] circumstances would have appreciated the high degree of risk" that the plaintiff was facing as a result of his condition and the defendant's treatment decision. *See Thomas v. Dart*, 39 F.4th 835, 841 (7th Cir. 2022). One way to show that a treatment decision is objectively unreasonable is by showing that the treatment was "a significant departure from accepted professional standards or practices." *See Williams v. Patton,* 761 F. App'x 593, 597 (7th Cir. 2019) (discussing standard for Fourteenth Amendment due process claim based on medical treatment decisions); *see also Holloway v. Delaware Cty. Sheriff*, 700 F.3d 1063, 1074 (7th Cir. 2012) ("so long as the determination is based on the physician's professional judgment and does not go against accepted professional standards," there is no constitutional violation)

Before plaintiff filed this lawsuit, plaintiff's medical records establish that defendant's only involvement in treating plaintiff's back pain was a single treatment

consultation and a renewal of plaintiff's Naproxen prescription. During that consultation, defendant reviewed plaintiff's complaints and medical history, noted the lack of new symptoms, and prescribed pain medications for plaintiff's chronic back condition. Although plaintiff disagreed with this treatment plan, and personally thought that he should have been prescribed a double mattress or narcotics, plaintiff's disagreement or dissatisfaction with defendant's treatment decisions is not sufficient, by itself, to establish a constitutional violation. *See Williams v. Ortiz*, 937 F.3d 936, 944 (7th Cir. 2019) ("[J]ust because the staff declined to provide him with his desired prescription pain medicine or the comfort of an extra mattress does not mean that the course of treatment was objectively unreasonable."); *Burton v. Downey*, 805 F.3d 776, 785 (7th Cir. 2015) ("Surely [plaintiff] would have preferred Vicodin to Ultram, or to have seen a doctor who would have prescribed narcotics, but detainees are not entitled to receive 'unqualified access to healthcare.'") (citations omitted); *Williams,* 761 F. App'x at 597 (detainee's "mere disagreement with a medical professional's otherwise reasonable treatment is not a basis for a constitutional claim").

Because no medical professional has opined that a double mattress or other drugs were medically necessary to treat plaintiff's chronic back condition or associated pain, and a reasonable jury could not rationally conclude that defendant's treatment was "such a significant departure from accepted professional standards or practices" that it was objectively unreasonable, there is nothing in this record to support a finding of objective unreasonableness. *See Williams,* 761 F. App'x at 597. Indeed, plaintiff's response to defendant's motion for summary judgment is that further discovery could help prove his

case (dkt. #47), but he does not say what additional evidence could prove that defendant's treatment decisions were objectively unreasonable. Moreover, this case has been pending for more than three years, and plaintiff was warned early in the case that he would need to be ready to submit evidence to defeat a motion for summary judgment if such a motion were filed. Nonetheless, he has failed to submit any evidence, despite having ample time to gather it. Finally, given plaintiff's precipitous filing of suit within a few weeks of defendant first seeing him, and while attempts to address his chronic back pain with non-narcotic pain relievers were ongoing, makes it virtually inconceivable that defendant could be faulted for not yet prescribing an additional mattress or narcotics.[1]

As a result, the court will grant defendant's motion for summary judgment and close this case.

ORDER

IT IS ORDERED that:

1. Defendant Salam Syed's motion for summary judgment (dkt. #40) is GRANTED.
2. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 14th day of February, 2024.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge

[1] Neither side addresses whether plaintiff was able to exhaust his administrative remedies in this short time frame, but because failure to exhaust is an affirmative defense, *Jones v. Bock*, 549 U.S. 199, 211 (2007), the court need not consider this issue.