

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

ROGER DALE GODWIN,

Petitioner,

v.

GARY BRIDGEWATER, M.D. and
ANN SARROW, HSU Unit Manager,

Respondents.

ORDER

05-C-593-C

This is a proposed civil action for injunctive and monetary relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the Columbia Correctional Institution in Portage, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner presently has no means with which to pay an initial partial payment of the \$250 fee for filing his complaint.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave

to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages.

From the allegations in the complaint, I understand petitioner to be alleging the following.

ALLEGATIONS OF FACT

Petitioner began to see respondent Bridgewater for back pain in May 2004 after he fell off the top bunk in his cell. In June 2004, x-rays were taken of petitioner after which he learned that he had "back problems, arthritis." Since that time, petitioner has experienced pain in his back that has not been treated correctly. In August 2005, petitioner began to complain that the pain had worsened. In response, respondent Bridgewater gave petitioner ibuprofen, Tylenol and Tylenol with codeine and told him that his pain was caused by stress. In early September 2005, respondent Bridgewater gave petitioner methadone. Methadone is used to treat persons addicted to heroin, speed and methamphetamine and is not for back and neck pain. Petitioner took the methadone once or twice and then stopped because it made him sick. In late September, a nurse named Steve saw petitioner. He did not examine

petitioner and did not give him any medicine for a rash on his right leg. Wool blankets make petitioner itch but the nurse did not give petitioner cotton blankets. On September 27, 2005, petitioner wrote a grievance to respondent Sarrow. On many occasions, petitioner is unable to sit up for more than two hours because of the pain. He has trouble sleeping, lying down and sitting. He has asked respondent Bridgewater to refer him to a specialist that can treat him but respondent Bridgewater has refused to do so.

DISCUSSION

I understand petitioner to allege that respondents Bridgewater and Sarrow have violated his Eighth Amendment protection against cruel and unusual punishment by failing to provide proper treatment for his back. To state a claim under the Eighth Amendment, a prisoner must allege that he has a serious medical need to which prison officials have been deliberately indifferent. Higgins v. Correctional Medical Services of Illinois, Inc., 178 F.3d 508, 511 (7th Cir. 1999). A serious medical need is one “that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” Foelker v. Outagamie County, 394 F.3d 510 (7th Cir. 2005). Also, a serious medical need can arise when the deliberately indifferent withholding of medical care results in needless pain and suffering. Gutierrez v. Peters, 111 F.3d 1364, 1371 (7th Cir. 1997). Deliberate indifference is a state of mind; to

allege that prison officials have acted or failed to act with deliberate indifference, a prisoner's allegations must, at a minimum, suggest that the officials were "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists" and that they drew the inference. Farmer v. Brennan, 511 U.S. 825, 837 (1994). In other words, petitioner must allege that respondents knew of and disregarded a substantial risk to his health. Greeno v. Daley, 414 F.3d 645, 653 (7th Cir. 2005). Allegations that show mere negligence, malpractice or a difference of opinion concerning treatment are insufficient to show deliberate indifference. Id.

Petitioner alleges that he has experienced back pain resulting from arthritis and a fall from a top bunk in May 2004 and that the pain has been severe enough to limit the amount of time he can sit or lie down. He alleges further that respondent Bridgewater has given him medication, including two narcotics, for his pain. This suggests that petitioner's condition is one that a doctor has recognized as requiring medical treatment. At this early stage, I conclude that petitioner's allegations regarding his back pain are sufficient to satisfy the "serious medical need" prong of an Eighth Amendment claim.

Petitioner's allegations are insufficient, however, to satisfy the "deliberate indifference" prong. He alleges that respondent Bridgewater has refused to send him to a specialist. At most, the allegation that respondent Bridgewater refused to refer him to a specialist is not sufficient to show deliberate indifference. The most that can be inferred

from this is that petitioner disagrees with the course of treatment is receiving. Dissatisfaction with a course of treatment does not give rise to a constitutional claim “unless the medical treatment is ‘so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition.’” Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (quoting Thomas v. Pate, 493 F. 2d 151, 158 (7th Cir. 1974)). In this case, petitioner concedes that x-rays of his back were taken and that respondent Bridgewater has given him medication to manage his pain. Nothing in petitioner’s complaint suggests that this course of treatment is blatantly inappropriate and likely to aggravate his condition. From his allegations, it appears that petitioner believes that respondent Bridgewater erred in giving him methadone. However, in addition to its use as a substitute narcotic for several forms of drug addiction, methadone is used also to treat pain. JAMES D. TOOMBS, M.D. & LEE A. KRAL, PHARM. D., Methadone Treatment for Pain States, *available at* <http://www.aafp.org/afp/20050401/1353.html>. Respondent Bridgewater’s administration of methadone to petitioner is not evidence that he is being deliberately indifferent to petitioner’s pain. Because petitioner has failed to allege that respondents have responded to his condition with deliberate indifference, he will be denied leave to proceed on this claim.

ORDER

IT IS ORDERED that:

1. Petitioner Roger Dale Godwin's request for leave to proceed in forma pauperis on his Eighth Amendment claim is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state a claim upon which relief may be granted;

2. The unpaid balance of petitioner's filing fee is \$250.00; petitioner is responsible for paying this amount whenever he has the means to do so;

3. A strike will be recorded against petitioner pursuant to § 1915(g); and

4. The clerk of court is directed to close the file.

Entered this 7th day of November, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge