

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

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DEAN SNODGRASS,

Plaintiff,

v.

LISA GREGAR,

Defendant.

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ORDER

05-C-608-C

On January 5, 2006, I granted plaintiff Dean Snodgrass leave to proceed in this action against defendant Lisa Gregar on a claim that Gregar violated plaintiff's Eighth Amendment rights by refusing to let him retrieve his hearing aid from the property storage area shortly after he was transferred to the New Lisbon Correctional Institution. In the same order, I denied plaintiff's motion for appointment of counsel because the case was too new to allow me to determine the complexity of the issues in relation to plaintiff's ability to prosecute the case. Defendant answered plaintiff's complaint on February 14, 2006, asserting as one of several affirmative defenses that plaintiff had failed to exhaust his administrative remedies. A preliminary pretrial conference has been scheduled for March 9, 2006 before United States Magistrate Judge Stephen Crocker. Now plaintiff has renewed his motion for

appointed counsel. Once again, the motion will be denied as premature.

As I told plaintiff in the January 5 order, this case is in its early stages. If defendant moves to dismiss plaintiff's case on the ground that he failed to exhaust his administrative remedies, plaintiff is capable of responding to such a motion with proof of his exhaustion, if he has it. If he did not exhaust his administrative remedies before bringing this lawsuit, it would make no difference to the outcome of the case if plaintiff were to have counsel. The case would have to be dismissed.

As noted above, this case is scheduled for a preliminary pretrial conference on March 9, 2006. At the conference, a deadline will be set for the filing of dispositive motions and pretrial procedures will be explained to plaintiff. I am confident that plaintiff has the ability to represent himself at this stage of the proceedings.

#### ORDER

IT IS ORDERED that plaintiff's second motion for the appointment of counsel is

DENIED, without prejudice.

Entered this 23rd day of February, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge