IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DEAN SNODGRASS,

ORDER

Plaintiff,

05-C-608-C

v.

LISA GREGAR,

Defendant.

- -

In this civil action under 42 U.S.C. § 1983, plaintiff Dean Snodgrass, a prisoner at the New Lisbon Correctional Institution, is suing defendant Lisa Gregar, a nurse at New Lisbon, for allegedly violating his Eighth Amendment protection against cruel and unusual punishment by refusing to allow him to retrieve his hearing aid from New Lisbon's property storage area until he had seen a doctor. On March 31, 2006, defendant filed a motion to dismiss for plaintiff's failure to exhaust his administrative remedies. After plaintiff failed to meet the deadline for responding to the motion, I issued an order extending his deadline until May 24, 2006. On May 17, 2006, plaintiff filed a response to defendant's motion. I have considered the contents of plaintiff's response, as well as the arguments presented by defendant. I conclude that defendant's motion must be granted because plaintiff failed to

file an inmate complaint naming defendant Gregar or complaining that he had been prevented from retrieving his hearing aid from New Lisbon's property storage area.

In support of her motion to dismiss, defendant has submitted the affidavit of Sandra Hautamaki, who is employed by the Wisconsin Department of Corrections as a corrections complaint examiner. Her job duties include receiving and investigating appeals filed by inmates who receive unfavorable decisions on their inmate complaints. Attached to Hautamaki's affidavit are three inmate complaints filed by plaintiff in June and August 2005 and the responses he received to those complaints. Because documentation of a prisoner's use of the inmate complaint review system is a matter of public record, these documents may be considered without converting defendants' motion to dismiss to a motion for summary judgment. Menominee Indian Tribe of Wisconsin v. Thompson, 161 F.3d 449, 455 (7th Cir. 1998); General Electric Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1080-81 (7th Cir. 1997).

I draw the following facts from Hautamaki's affidavit and the attached inmate complaints.

FACTS

Plaintiff Dean Snodgrass was transferred to the New Lisbon Correctional Institution on August 3, 2004. On June 20, 2005, plaintiff filed inmate complaint #NLCI-2005-19181,

in which he stated:

> I must get my hearing aid. It have been over 2 month. And this is a very serious medical issue. Please make sure I received them. This is a delay in my medical need. Please help me. I am disable okay? HSU should not do this to me.

At the bottom of the complaint, under the heading "Name(s) of People Who Have Information About This Complaint," plaintiff wrote "HSU Staff, Ms. Warner, Doctor, Heinzl." On June 21, 2005, inmate complaint examiner Nancy Wood rejected plaintiff's complaint on the ground that it was moot. Wood wrote that

> On 06/21/05 ICE PA Wood checked the medical files of Inmate Snodgrass and found an order for a hearing aide for the Inmate. Ms. Artus has an appointment scheduled for this date 06/21/05 to meet with Inmate Snodgrass on his hearing aid. Arrangements for the hearing aide will be made with the Inmate on this date.

Plaintiff did not appeal the rejection of this complaint.

On July 13, 2005, plaintiff filed another inmate complaint, #NLCI-2005-21815, in which he wrote the following:

> I have now "permanent" hearing to my ears, on the account of a lack of not treating my condition. Marathon County jail lost them and [Waupun Correctional Institution] would not provide but one. Also [Dodge Correctional Institution] as well as [New Lisbon Correctional institution] here I talked to the doctor yesterday and she stated on the appointment that I (needed) two hearing aids. And on the (delay) and (ignance) [sic] of not providing me with them, I have lost well over 70 percent of my hearing because of not being treated medically. This is a violation of the 8th Amend. clause. Ms. Warner, HSU manager, Dr. Heinzl, and many (John Does) (of) the above institutions are liable of this permanent damage of my hearing lost.

On July 22, 2005, inmate complaint examiner Jill Sweeney affirmed this complaint, writing the following:

> Inmate Snodgrass complains that he has not been given hearing aids. Ms. Warner reviewed the inmate's chart and stated that an order has been made for the inmate to receive two hearing aids however some administrative procedures have delayed this process. Ms. Warner stated that she is currently working to get the inmate his hearing aids. Due to delays that have occurred, recommendation is made to affirm this complaint. As Ms. Warner is aware of the issue at hand, modification is made that no further action be taken by the ICE at this time. Inmate Snodgrass is encouraged to contact Ms. Warner with any questions or concerns relating to his hearing aids.

On July 26, 2005, Cynthia Thorpe accepted Sweeney's recommendation and affirmed plaintiff's complaint. Plaintiff appealed Thorpe's decision on July 29, 2005. In his appeal, he wrote that he was

> appealing this decision because I never (received) my two hearing aids. I have all ready lost 70 percent of my hearing from a lack of medical mistreatment. This should not happened to me. I am basically "deaf." I was delayed by (Dr. Heinzl) and Candance Warner, HSU M.G.R. at (NLCI). I must get my hearing aids immediately. Please I am suffering so bad without them please help me? I "begged" for my two hearing aid. The one hearing I did have never had batteries. It kept going out. I was neglected terribly! Please help.

On August 2, 2005, Hautamaki recommended affirming plaintiff's complaint with the modification noted by Sweeney. Richard Raemisch accepted this recommendation on behalf of the Secretary of the Department of Corrections the same day.

On August 5, 2005, plaintiff filed inmate complaint #NLCI-20058-24271. In this complaint, plaintiff wrote that the "D.O.C. Elite members 'knew' about my hearing

condition and yet did any thing to help prevent my hearing illness, lost." At the bottom of the complaint, plaintiff wrote the following names: "CO Booth," Matthew Frank, James Greer, Sharon Zunker, "Tegal," "Casperson" and "Farrey." Nancy Wood rejected this complaint on August 8, 2005, because the issue raised had been addressed in complaint #NLCI-2005-21815. Petitioner appealed this decision on August 8. He wrote the following in his appeal:

> Dear Warden I would like for you to please understand me. That DOC Department should had been provided me with hearing aids and know I have lost more of my hearing do to the fact that all the people involved in to his matter. and I still do not have my hearing aids!! Please respond soon? Thank you much.

On October 7, 2005, Lizzie Tegels, deputy warden at New Lisbon, ruled that plaintiff's complaint had been properly rejected.

After a diligent search of inmate complaint appeals, Hautamaki found no appeals filed by plaintiff concerning defendant Gregar or her refusal to allow plaintiff to retrieve his hearing aid from New Lisbon's property storage area until he had been examined by a doctor.

DISCUSSION

The Prison Litigation Reform Act states that a prisoner may not bring a civil action challenging prison conditions until he has first exhausted "such administrative remedies as

are available." 42 U.S.C. § 1997e(a). The Court of Appeals for the Seventh Circuit has held that "[e]xhaustion of administrative remedies, as required by § 1997e, is a condition precedent to suit" and that district courts lack discretion to decide claims on the merits unless the exhaustion requirement has been satisfied. Dixon v. Page, 291 F.3d 485, 488 (7th Cir. 2002); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 535 (7th Cir. 1999). "[I]f a prison has an internal administrative grievance system through which a prisoner can seek to correct a problem, then the prisoner must utilize that administrative system before filing a claim." Massey v. Helman, 96 F.3d 727, 733 (7th Cir. 1999). In considering what facts or pleadings an inmate's administrative complaint should contain, the court must look to the appropriate administrative system requirements, Wis. Admin. Code DOC ch. 310. Strong v. David, 297 F.3d 646, 649 (7th Cir. 2002). When the administrative requirements are silent as in the Wisconsin Administrative Code, "a grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought." Id. at 650. Plaintiff need not articulate specific legal theories or particular remedies but need only make known an objection to some problem or wrongdoing. Id.

After reviewing the allegations in plaintiff's complaint and the supplement he filed on December 21, 2005, I concluded that he had stated an Eighth Amendment claim against defendant Gregar because he alleged that after he was transferred to New Lisbon from the Waupun Correctional Institution, defendant Gregar refused to allow him to retrieve his

hearing aid from the institution's property room until he had been examined by Dr. Glen Heinzl, a physician at New Lisbon. Plaintiff alleged further that Dr. Heinzl examined him two months after defendant Gregar refused to let him retrieve his hearing aid.

Plaintiff's claim in this case is not merely that defendant Gregar was one of the prison officials responsible for the delay plaintiff experienced in receiving his hearing aid. It is more narrowly defined than that. Plaintiff's claim relates to her refusal to allow him to retrieve his hearing aid right after he was transferred to New Lisbon in August 2004. None of the three inmate complaints filed by plaintiff concerning his hearing aid mentions defendant Gregar or a nurse at New Lisbon or plaintiff's inability to retrieve his hearing aid from New Lisbon's property room. In addition, each of the complaints were filed months after the conduct on which plaintiff's claim in this lawsuit is based allegedly occurred.

In his response to defendant's motion to dismiss, plaintiff concedes that he had not filed an inmate complaint about defendant Gregar before filing this lawsuit. In his response, plaintiff writes,

> the Exhaustion of my I.C.E. complaint was knot [sic] file[d] at that time because she Defendant Gregar to me that I better knot [sic] try to go over her head or do anything cause she would discipline me so I was afraid of what mite [sic] happen or what she would do to me.

At the end of his response, plaintiff contends that he did file a complaint about defendant Gregar. However, he has not submitted a copy of this complaint with his response.

Moreover, it is likely that this complaint would not be timely because the PLRA requires exhaustion *before* an inmate files suit. This means that plaintiff had to file an inmate complaint about defendant Gregar's refusal to allow him to retrieve his hearing aid and pursue that complaint through every appropriate step of Wisconsin's inmate complaint review process before filing his complaint in this case. There is no evidence that plaintiff did this. I am satisfied that defendant has met her burden of showing that plaintiff failed to exhaust his administrative remedies. Accordingly, I will grant her motion.

ORDER

IT IS ORDERED that defendant's motion to dismiss is GRANTED and this case is DISMISSED without prejudice to plaintiff's refiling his complaint after he has exhausted his administrative remedies.

Entered this 18th day of May, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge