

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

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ROBERT B. CIARPAGLINI,

Plaintiff,

v.

MEMORANDUM and ORDER  
07-C-440-S

BELINDA SCHRUBBE, and DR. RALPH FROELICH,

Defendants.

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ROBERT CIARPAGLINI,

Plaintiff,

v.

07-C-441-S

KEVIN KALLAS, DR. RALPH FROELICH  
and BELINDA SCHRUBBE,

Defendants.

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Plaintiff Robert B. Ciarpaglini was allowed to proceed on his Eighth Amendment claims against defendants Belinda Schrubbe, Dr. Ralph Froelich and Kevin Kallas. In his complaint he alleged that defendants Belinda Schrubbe and Dr. Ralph Froelich denied him his prescription medication which caused him to have a grand mal seizure. He also alleged that defendants Froelich, Schrubbe and Kevin Kallas are refusing to treat his panic attacks.

On August 21, 2007 defendants moved to dismiss plaintiff's complaint for failure to exhaust his administrative remedies. This motion has been fully briefed and is ready for decision.

Plaintiff has moved for Rule 11 sanctions because he contends that defendants did not indicate that he had fully exhausted his administrative remedies concerning his claim against Kallas. This motion will be denied because plaintiff's documentation concerning exhaustion of his administrative remedies was concerning a previous claim and not this claim. Plaintiff's motion for Rule 11 sanctions will be denied.

#### FACTS

Plaintiff is currently incarcerated at the Waupun Correctional Institution, Waupun, Wisconsin (WCI). Defendants Belinda Schrubbe and Dr. Ralph Froelich are employed at WCI. Defendant Kevin Kallas is an employee of the Wisconsin Department of Corrections.

In his complaint plaintiff alleges that defendants Schrubbe and Froelich discontinued his Concerta medication on August 2, 2007. He further alleges that while he was at WCI from June 21, 2007 to August 1, 2007 defendants Schrubbe, Froelich and Kallas refused to treat his panic attacks.

In May 2007 while plaintiff was incarcerated at the Columbia Correctional Institution he filed an inmate complaint, CCI 2007-1370 concerning the denial of effective medication for his panic disorders while at CCI. Plaintiff exhausted his administrative remedies on this claim.

On June 28, 2007 plaintiff attempted to file an inmate grievance at WCI concerning the defendants refusal to treat his

panic disorder. Although the inmate complaint was stamped received it was not filed and was returned to plaintiff.

Plaintiff's inmate complaint was rejected pursuant to a 1993 Settlement agreement to which he entered into with the State of Wisconsin. That agreement limits the number of inmate complaints he may file at one time. Plaintiff agreed to have no more than two active inmate complaints at any given time.

#### MEMORANDUM

Defendants seek to dismiss plaintiff's complaint for failure to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997e(a). No action shall be brought with respect to prison conditions by a prisoner confined in any jail, prison or other correctional facility until available administrative remedies are exhausted. Prisoners must file their complaints and appeals in the place and at the time the prison's administrative rules require. Pozo v. McCaughtry, 286 F. 3d 1022, 1025 (7<sup>th</sup> Cir. 2002).

In Perez v. Wisconsin Department of Corrections, 182 F.3d 532, 535 (7<sup>th</sup> Cir. 1999), the Court held as follows:

...a suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits, even if the prisoner exhausts intra-prison remedies before judgment.

Plaintiff argues that he has exhausted his administrative remedies concerning his claim against defendant Kallas. He is

mistaken. He filed an inmate complaint in May 2007 about defendant Kallas' refusal to effectively treat his panic attacks at CCI. This inmate complaint and subsequent exhaustion did not pertain to defendant Kallas' alleged conduct after plaintiff's transfer to WCI in June 2007. Plaintiff attempted to file a new inmate complaint concerning his WCI claim on June 28, 2007 which was not filed.

Plaintiff argues that he is exempt from the exhaustion requirement because administrative remedies are not available to him. Administrative remedies are available to him. He may have two active inmate complaints at a time. Had plaintiff wished to file an inmate complaint concerning his panic attacks at WCI he could have dismissed another inmate complaint to do so. Plaintiff voluntarily entered into the Settlement agreement and is bound by it.

Plaintiff has failed to exhaust administrative remedies that were available to him. Accordingly, plaintiff's complaint will be dismissed for his failure to exhaust his administrative remedies.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his complaint must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

#### ORDER

IT IS ORDERED that plaintiff's motion for Rule 11 sanctions is DENIED.

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IT IS FURTHER ORDERED that defendants' motion to dismiss is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaints without prejudice for his failure to exhaust his administrative remedies.

Entered this 11<sup>th</sup> day of September, 2007.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge