

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

MICHAEL E. WILLIAMS,

Plaintiff,

v.

LORI ALSUM, STEVE HELGERSON,
DR. DALIA SULIENE and PAUL KETARKUS,

Defendants.

ORDER

10-cv-433-bbc

In this case, plaintiff Michael Williams is proceeding on his claims that defendants Dalia Suliene, Lori Alsum, Steve Helgersen and Paul Ketarkus failed to provide adequate treatment for his back and neck injury in violation of the Eighth Amendment. Now before the court is plaintiff's motion and for his own physical examination pursuant to Fed. R. Civ. P. 35. Dkt. 21.

Fed. R. Civ. P. 35 allows a court to order the government to pay for a mental or physical examination of a party, but not in circumstances such as this. Rule 35 provides:

The court where the action is pending may order a party whose mental or physical condition-including blood group-is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

The Supreme Court has interpreted this rule to require the moving party to show that the medical condition of the person being sought for examination is "in controversy and that 'good cause' exists for the examination. *Schlagenhauf v. Holder*, 379 U.S. 104, 118-119 (1964). Under this rule, the court could order plaintiff to submit to an examination at the

request of the *opposing party*. Also, under proper circumstances, this rule would allow the court to compel a party who has a person in his or her custody or under his or her legal control to produce that person for a physical examination, on motion by an opposing party. For example, a father suing to recover for injuries to his infant son allegedly sustained as the result of a defendant's negligence may be required to produce the son for a physical examination, on motion by the defendant.

The rule is not intended to cover a situation such as the one here, where plaintiff wishes to obtain a a medical examination of himself. Obtaining evidence to prove his case is plaintiff's responsibility, not the government's. Plaintiff suggests no basis for an order compelling the government to pay for a physical examination, presumably by a doctor who is not working for the Department of Corrections.

ORDER

IT IS ORDERED that plaintiff Michael Williams' motion for a physical examination, dkt. 21, is DENIED.

Entered this 22nd day of February, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge