

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

DAMIEN GREEN,

Plaintiff,

v.

DALIA SULIENE,

Defendant.

OPINION AND ORDER

10-cv-485-slc

Between August 26, 2010 and March 4, 2011, plaintiff Damien Green filed five civil rights complaints in this court under 42 U.S.C. § 1983 alleging mistreatment in the Wisconsin prison system.¹ In this case, Green alleges that he was denied adequate medical care while in state prison. After screening the complaint, dkt. 17, this court allowed Green to proceed with several claims under the Eighth Amendment. Most of those claims were dismissed in an order entered on September 15, 2011. Dkt. 80. The only remaining claim is that Dr. Dalia Suliene was deliberately indifferent to Green's serious medical needs by failing to provide prescription medication for high blood pressure, asthma, back pain and hypoglycemia. Before the court is Suliene's motion for summary judgment. Dkt. 83.

In June 2010, Green received instructions on filing submissions related to summary judgment. *Procedure to be Followed on Motions for Summary Judgment*, attached to the pretrial conference order, dkt. 52. As explained in those instructions, if a defendant files a motion for summary judgment, then the plaintiff is directed to file a response to the defendant's proposed findings of fact, a brief with opposing legal arguments, and evidentiary materials that support

¹ See Case Nos. 10-cv-485, 10-cv-496, 10-cv-745 (split by the court into a sixth case, 11-cv-816), 11-cv-131 and 11-cv-163. The matters complained of range from Green chipping his tooth on breakfast cereal to a class action complaint addressing America's enslavement of kidnaped Africans dating back to 1619.

plaintiff's fact responses and proposals. *Procedure*, II.A.1-3. The plaintiff is supposed to propose each fact in a separate paragraph and support each fact by referring to the evidence he had submitted in support. *Procedure*, II.D.1-2.

Green has filed a response to Suliene's summary judgment motion, but he has failed to comply fully with the court's procedures. In particular, he did not respond to Suliene's proposed findings of fact. Therefore, I must conclude that the facts proposed by Suliene are undisputed to the extent that they are supported by admissible evidence. *Doe v. Cunningham*, 30 F.3d 879, 883 (7th Cir. 1994); *Strong v. Wisconsin*, 544 F. Supp.2d 748, 759-60 (W.D. Wis. 2008). Because the record does not contain evidence showing that Suliene was deliberately indifferent to Green's serious medical needs, I conclude further that Suliene is entitled to summary judgment.

From defendant's proposed findings of fact, I find the following facts to be material and undisputed:

FACTS

At all times relevant to this action, Green was an inmate in the Wisconsin Department of Corrections (DOC). On March 22, 2010, Green transferred from the Dodge Correctional Institution (DCI) to the Columbia Correctional Institution (CCI) in Portage, Wisconsin, where Suliene is employed as a physician. Green remained at CCI until August 2010, when he was transferred elsewhere.

When Green first arrived at CCI on March 22, 2010, a nurse reviewed his medical records and filled out a transfer screening form. The only significant medical conditions documented on Green's transfer screening form were hypertension (high blood pressure) and

asthma, which is a chronic inflammatory disorder of the airways. Noting that Green had a history of hypertension, the nurse scheduled a follow-up appointment for him on April 20, 2010. Other than listing some allergies, however, the nurse noted no other specific medical needs, problems or restrictions.

At the time of his transfer on March 22, 2010, Green had prescriptions for Lisinopril and Hydrochlorothiazide (HCTZ) to treat his high blood pressure. Green also had a prescription for Certirzine, which is an antihistamine, to treat cold or allergy symptoms that could trigger his asthma. In addition, Green had an Albuterol inhaler for any intermittent episodes of asthma. Green was allowed to keep the Albuterol inhaler with him for use when it was needed and he could ask for refills when it ran out. The transfer screening form notes that all of Green's prescription medication had been provided to him or to the unit ("to patient and/or unit") upon his transfer from DCI.

Green's blood pressure was monitored on a regular basis throughout his confinement at CCI. Medical records reflect that Green's blood pressure was within the acceptable range for well-controlled hypertension at all times. Green's medication was in stock at the CCI Health Services Unit (HSU), and he did not report any problems due to delay in receiving his blood pressure medication.

Green also received treatment and medication for his asthma at CCI. On July 1, 2010, Green requested a new Albuterol inhaler. Green was evaluated that day and found to be in no distress. Green's peak air flow was measured at 440 and 430 liters per minute, which was about average for him. The request was approved and Green received a new inhaler that same day. There is no evidence that Green required treatment for an asthma attack while at CCI. Green

did not report any problems due to delay in receiving his asthma inhaler or any asthma-related medication.

Records show that, while Green was pursuing treatment for other medical issues at CCI, his blood sugar level was checked and found to be within the normal range. Green also received medication for back pain. During an appointment with Dr. Suliene on June 3, 2010, Green requested Ibuprofen² for back pain. Green first reported back pain in 2009 after suffering an injury during a basketball game. Dr. Suliene granted Green's request and issued an order for 400 milligrams of Ibuprofen, three times a day, for one month. On July 13, 2010, Dr. Suliene issued a prescription for Naproxen, another NSAID used to relieve pain, 500 milligrams, twice daily for six months, to be taken as needed. During this time, Green also had a prescription from the psychiatry department for Amitriptyline, which often is used for chronic back pain management, to be taken at bedtime. These prescriptions were in stock and available to Green at all times while he was at CCI.

On August 25, 2010, Green filed the civil rights complaint in this case. According to his amended complaint, *see* dkt. 16, Green alleges that Dr. Suliene denied him prescription medication for high blood pressure, asthma, back pain and hypoglycemia. In his response to the summary judgment motion, Green clarifies that he was denied medication for these conditions when he first arrived at CCI on March 22, 2010. Dkt. 101, ¶ 10. Green complains that, upon his transfer to CCI, officers had to call the HSU "several times" before his medication was "sent down" to his cell. Dkt. 100, p. 6. Green blames Dr. Suliene for this delay, speculating that "[e]ither Dr. Suliene never order[ed] the medication or it was lost [en route] to the unit." *Id.*

² a non-steroidal anti-inflammatory drug (NSAID).

Green insists, therefore, that he was denied medication with deliberate indifference to his serious medical needs.

ANALYSIS

I. Summary Judgment Standard

The purpose of summary judgment is to determine whether the parties have gathered and can present enough evidence to support a jury verdict in their favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Albiero v. City of Kankakee*, 246 F.3d 927, 932 (7th Cir. 2001). Summary judgment is appropriate if there are no genuinely disputed material facts, and if on the undisputed facts, the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The applicable substantive law will dictate which facts are material. *Darst v. Interstate Brands Corp.*, 512 F.3d 903, 907 (7th Cir. 2008). A factual dispute is “genuine” only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248; *Roger Whitmore’s Auto. Serv., Inc. v. Lake County, Ill.*, 424 F.3d 659, 667 (7th Cir. 2005).

In this civil lawsuit, Green, as the plaintiff, has the burden to prove his claim. Green must show what evidence he has that would convince a trier of fact to accept his version of the events. *Springer v. Durflinger*, 518 F.3d 479, 484 (7th Cir. 2008); *see also Schacht v. Wisconsin Dept. of Corrections*, 175 F.3d 497, 504 (7th Cir. 1999) (“Roughly speaking, [summary judgment] is the ‘put up or shut up’ moment in a lawsuit . . .”). Even so, in deciding Suliene’s summary judgment motion, this court must view all facts and draw all inferences in the light most favorable to Green because he is the non-moving party. *Schuster v. Lucent Technologies, Inc.*, 327 F.3d 569, 573 (7th Cir. 2003). But Green may not simply rest on the allegations in his

complaint; rather, he must respond by presenting specific facts that would support a jury's verdict in his favor on his claims. *Hunter v. Amin*, 583 F.3d 486, 489 (7th Cir. 2009); *Van Diest Supply Co. v. Shelby County State Bank*, 425 F.3d 437, 439 (7th Cir. 2005). If Green fails to make a sufficient showing on an essential element of his case on which he has the burden of proof, then this court must grant summary judgment to the defendant. *Celotex*, 477 U.S. at 323.

II. Eighth Amendment Medical Care Requirements

Green alleges that he was denied medical care in the form of prescription medication upon his arrival at CCI on March 22, 2010. Prison officials have a duty under the Eighth Amendment “to provide medical care for those whom it is punishing by incarceration.” *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996) (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). Prison officials violate the Eighth Amendment if they are “deliberately indifferent” to a prisoner’s “serious medical needs.” *Arnett v. Webster*, 658 F.3d 742, 750 (7th Cir. 2011) (citing *Estelle*, 429 U.S. at 104).

The Eighth Amendment deliberate indifference standard has both an objective and subjective component. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To meet the objective prong of this standard, a prisoner must show that he had “a known, objectively serious medical condition” that posed an excessive risk to his health. *Id.* at 837. A medical condition is serious if it “has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention.” *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). With respect to the subjective component, a prison official cannot be found liable under the Eighth Amendment unless the official “knows of and disregards an

excessive risk to inmate health or safety.” *Farmer*, 511 U.S. at 837. In other words, the official “must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.*

Green complains that he was denied prescription medication on March 22, 2010 ,for high blood pressure, asthma, back pain and hypoglycemia. The Seventh Circuit has recognized that chronic pain presents an objectively serious medical condition. *Gonzalez v. Feinerman*, 553 F.3d 311, 314 (7th Cir. 2011). The other conditions listed by Green, if untreated to the point of causing pain or other complications, may also rise to the level of a serious medical condition. *See Lee v. Young*, 533 F.3d. 505, 510 (7th Cir. 2008) (observing that “asthma ‘can be, and frequently is, a serious medical condition, depending on the severity of the attacks’”); *see also Robinson v. Hager*, 292 F.3d 560, 564 (8th Cir. 2002) (considering whether officials were deliberately indifferent to a prisoner’s hypertension or whether some other factor caused him to suffer a stroke); *Gonzalez v. Jones*, No. 07 Civ. 2126, 2010 WL 533856, *15 (S.D.N.Y. Feb. 11, 2010) (observing that, where an inmate suffers from type I diabetes, “severe hypoglycemia, resulting in a diabetic seizure, constitutes a serious medical condition”).

In this case, it is questionable whether any of Green’s conditions met the objective prong of the Eighth Amendment analysis. As Dr. Suliene observes, the transfer screening form lists high blood pressure and asthma as the only two significant medical problems documented by Green’s medical records. Dr. Suliene does not dispute that Green has a history of high blood pressure and asthma, nor does she dispute that these conditions can pose a serious medical need if untreated. Dr. Suliene notes, however, that the transfer form does not document any state of distress on Green’s part. Likewise, there is no indication in the corresponding medical records

that Green arrived at CCI with a chronic, untreated problem that required immediate medical attention on March 22, 2010.

Assuming that any of Green's health problems could have posed an excessive risk to his health, the critical question on summary judgment is whether Dr. Suliene knew of a risk to Green's health but failed to take reasonable measures to provide him with prescription medication or with other care he may have needed. *Farmer*, 511 U.S. at 837; *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). As noted above, neither the transfer screening form nor the medical chart reflects that Green arrived at CCI in dire straits. Dr. Suliene emphasizes that, according to the transfer screening form, Green's medication was provided either to him or to the unit during the transfer process from DCI. Based on her review of Green's chart, Dr. Suliene observes further that Green had access to medication and treatment, which kept his hypertension and asthma under control for the entire time that he was assigned to CCI from March 2010 through August 2010. Dr. Suliene adds that Green received medication for back pain while assigned to CCI, and that his medical records documented no episode of hypoglycemia. The medical records, which reflect that Green received consistent care and medication as needed, support Dr. Suliene's affidavit and do not contain evidence showing that Green suffered from a serious medical need that went untreated at any time during his confinement at CCI.

Green does not present evidence or allege facts that call this record into doubt. He does not allege or show that his blood pressure or his asthma posed a problem that was deliberately ignored when he arrived at CCI on March 22, 2010, or at anytime thereafter. At most, Green alleges that correctional officers had to call the HSU "several times" to get his medication "sent

down” to his cell when he arrived at CCI. Dkt. 100, at 6. In other words, Green appears to be complaining that there was a delay in providing him with medication during the transfer and intake process.

The available records contain no grievances or complaints from Green about delay in receiving medication and he provides no other details in support of his claim. Although it may have taken time for officers to obtain Green’s medication from the HSU, mere delay in providing medical treatment does not automatically trigger an Eighth Amendment violation. *Knight v. Wiseman*, 50 F.3d 458, 466 (7th Cir. 2009). To demonstrate a constitutional violation, a prisoner who complains of delay in medical treatment must place “verifying medical evidence in the record to establish the detrimental effect of delay.” *Langston v. Peters*, 100 F.3d 1235, 1240 (7th Cir. 1996). Specifically, he must present evidence showing that “delay (rather than the inmate’s underlying condition) caused some degree of harm.” *Williams v. Liefer*, 491 F.3d 710, 715 (7th Cir. 2007). Green does not allege that he suffered any detrimental consequences and his medical records do not disclose any. Under these circumstances, Green’s allegations are insufficient to raise a fact issue on whether care was delayed with deliberate indifference to a serious medical need.

In summary, Green does not show that he was denied prescription medication while he was incarcerated at CCI or that he suffered harm as the result of any delay in receiving medication upon his transfer to that facility. Based on this record, the court concludes that no reasonable jury could find that Dr. Suliene was deliberately indifferent to Green’s serious medical needs. Therefore, Dr. Suliene is entitled to summary judgment.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendant Dr. Dalia Suliene, dkt. 83, is GRANTED. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 14th day of May, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge