IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

BRIAN PHEIL,

Plaintiff, OPINION and ORDER

v. 10-cv-659-bbc

TAMMY MAASSEN, DR. ADLER,
DR. BRET REYNOLDS and DR. HIRSCHMAN,

Defendants.

- -

In a previous order, I severed this case from case no. 10-cv-555-bbc under Fed. R. Civ. P. 20. Plaintiff Brian Pheil's claim in this case is that defendants Maasen, Adler, Reynolds and Hirshman discontinued various medications plaintiff took without a legitimate reason and failed to prescribe appropriate substitutes, in violation of the Eighth Amendment. Because plaintiff is a prisoner, I must screen the complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2). Having reviewed the complaint, I conclude that plaintiff has stated a claim upon which relief may be granted with respect to each of the defendants.

Plaintiff fairly alleges the following facts, which I have construed liberally as required by Haines v. Kerner, 404 U.S. 519, 521 (1972).

ALLEGATIONS OF FACT

Plaintiff Brian Pheil is a prisoner in the Wisconsin Department of Corrections. During the times relevant to this lawsuit, plaintiff was incarcerated at the Stanley Correctional Institution or the Jackson Correctional Institution. On July 2, 2009 a psychiatrist at that Stanley prison prescribed lorazepam for plaintiff's anxiety, depression, panic attacks and restless leg syndrome. When plaintiff met with the psychiatrist again on July 14, 2009, plaintiff told her that the medication was helping him sleep. Nevertheless, the psychiatrist told plaintiff that she would be switching plaintiff's medication to "clonozepam/klonopin." When plaintiff met with the psychiatrist again on August 19, 2009, he told her that he experienced stress "at times," but did not have any panic attacks.

After plaintiff was transferred to the Jackson Correctional Institution, he met with defendant Bret Reynolds, a psychiatrist at the prison. Plaintiff told Reynolds that "benzodiazepines were the only medications, past and present, that would enable him to sleep and to relieve his anxiety from his condition," but Reynolds discontinued plaintiff's medication and prescribed mirtazapine instead. The only reason Reynolds gave for the switch was a risk of substance abuse, even though it was "fully documented that . . . plaintiff

clearly has no history of any kind of substance abuse." Because of the new medication, plaintiff experienced "even more restless legs than before." He could not sleep and developed headaches. When plaintiff complained, defendant Reynolds refused to do anything except refer plaintiff to defendant Adler, a medical doctor at the prison.

On October 19, 2009, plaintiff informed the health services unit that his medication was ineffective and making him "extremely nauseated and sick." Plaintiff was instructed that he should not take his medication and that an appointment would be scheduled with Dr. Adler. On October 30, plaintiff asked when he was going to see Dr. Adler. (Plaintiff does not say whether anyone responded.)

On November 17 plaintiff wrote defendant Hirschman, a psychologist at the prison. Plaintiff complained that defendant Reynolds had "robotically taken [him] off the only medication that was helping [his] condition." Hirschman said that "he could not intervene in this matter because Dr. Reynolds was extremely tough to deal with when it comes to controlled medications."

On November 24, plaintiff wrote the health services unit again. They told him that he had an appointment scheduled with Dr. Reynolds on December 1. On November 26, plaintiff wrote back, saying that Reynolds and Hirschman had refused to address the problem. In addition, he said that he had approximately 8 hours of sleep during the last week. (Plaintiff does not say whether Reynolds saw plaintiff on December 1.)

On December 3, plaintiff wrote to defendant Tammy Maassen, explaining the problems he was having with defendants Adler, Reynolds and Hirschman. Maassen did not respond. Plaintiff wrote defendants again in January 2010, but they did not help him.

On January 31, plaintiff was in an altercation with another prisoner. Dr. Adler discontinued all of plaintiff's medication.

OPINION

I understand plaintiff to contend that defendants Maassen, Adler, Reynolds and Hirschman violated his right to medical care under the Eighth Amendment by failing to provide him medication for his mental health problems. A prison official may violate this right if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it "significantly affects an individual's daily activities," Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir.1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials

are aware that the prisoner needs medical treatment, but are disregarding the risk by failing to take reasonable measures to provide it. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir.1997).

Thus, under this standard, plaintiff's claim has three elements:

(1) Does plaintiff need medical treatment?

(2) Do defendants know that plaintiff needs treatment?

(3) Despite their awareness of the need, are defendants failing to take reasonable measures to provide the necessary treatment?

Plaintiff's allegations are sufficient to state a claim upon which relief may be granted. At summary judgment or trial, plaintiff will have to come forward with admissible evidence showing that he is suffering serious health consequences as a result of defendants' decisions about his medication. In addition, it will not be enough for plaintiff to show that he disagrees with defendants' conclusions about the appropriate treatment, Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006), or even that defendants could be providing better treatment, Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008). Rather, plaintiff will have to show that any medical judgment exercised by defendants is "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his condition. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted).

ORDER

IT IS ORDERED that

1. Plaintiff Brian Pheil is GRANTED leave to proceed on his claim that defendants Maassen, Adler, Reynolds and Hirschman discontinued various medications plaintiff took without a legitimate reason and failed to prescribe appropriate substitutes, in violation of the Eighth Amendment.

2. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of documents.

4. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

5. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

Entered this 2d day of November, 2010.

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