IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DION MATHEWS and MUSTAFA-EL K.A. AJALA
formerly known as Dennis E. Jones-El,

OPINION and ORDER

Plaintiffs,

10-cv-742-bbc

v.

RICK RAEMISCH, PETER HUIBREGTSE,
GARY BOUGHTON, JAMES GREER,
DAVID BURNETT, CYNTHIA THORPE,
LT. HANFELD, MARY MILLER,
KAMMY JONES and WISCONSIN DEPARTMENT OF CORRECTIONS,

Defendants.

- -

Pro se plaintiffs Dion Mathews and Mustafa-el K.A. Ajala are proceeding on the following claims:

(a) defendants James Greer, David Burnett, Cynthia Thorpe, Mary Miller, Gary Boughton, Kammy Jones, Lieutenant Hanfeld, Peter Huibregtse and Rick Raemisch are refusing to provide orthopedic shoes, in violation of the Eighth Amendment;

(b) defendants Wisconsin Department of Corrections, Greer, Burnett, Thorpe, Miller, Boughton, Jones, Hanfeld, Huibregtse and Raemisch are refusing to provide orthopedic shoes, in violation of the Americans with Disabilities Act; and

(c) defendants Hanfeld, Boughton, Huibregtse and Raemisch are subjecting plaintiffs to 24-hour lighting, in violation of the Eighth Amendment.

In addition, plaintiff Ajala is proceeding on a claim that defendants Huibregtse, Miller, Greer and Burnett are enforcing an unconstitutional dental policy that requires prisoners to have a tooth extracted in any instance in which a root canal is needed. Plaintiffs filed a motion for a preliminary injunction with respect to their Eighth Amendment claim that defendants were denying them special shoes, but I denied that motion on the ground that plaintiffs failed to show that they suffered from a serious medical need that required immediate treatment or that defendants were acting unreasonably by refusing to provide the requested shoes. Dkt. #56.

Now before the court are motions for summary judgment filed by both sides. Dkt. ##84 and 108. In addition, plaintiffs have filed a motion to amend their opening brief to include an argument regarding Ajala's dental care claim. Dkt. #124. I am granting that motion as unopposed. With respect to the summary judgment motions, I am granting defendants' motion in full and denying plaintiffs' motion because plaintiffs have failed to adduce evidence from which a reasonable jury could find in their favor on any of their claims.

PRELIMINARY ISSUES

Plaintiffs submitted only five proposed findings of fact with their summary judgment materials. They rely primarily on the proposed findings of fact they filed with their motion for a preliminary injunction and their *responses* to defendants' proposed findings of fact. Although this court's summary judgment procedures do not expressly allow parties to rely on proposed findings of fact filed at different stages of the case, I will consider these facts because defendants filed responses to those proposed findings of fact previously and they do not object to plaintiffs relying on them now. However, this does little to benefit plaintiffs because many of the facts proposed at the preliminary injunction stage were too vague or conclusory to support their claims, as I explained to plaintiffs in the order denying their motion. Dkt. #56.

With respect to plaintiffs' reliance on their responses to defendants' proposed findings of fact, this court's summary judgment procedures are clear that a party's proposed findings of fact and responses are separate documents and the responses serve a particular purpose:

> When a responding party disputes a proposed finding of fact, the response must be limited to those facts necessary to raise a dispute. The court will disregard any new facts that are not directly responsive to the proposed fact. If a responding party believes that more facts are necessary to tell its story, it should include them in its own proposed facts, as discussed in II.B.

Procedure to Be Followed on Motions for Summary Judgment, II.D.4. Plaintiffs received

these procedures with the preliminary pretrial conference order, dkt. #22, and again with the briefing schedule for defendants' motion for summary judgment.

These procedures serve the important purpose of helping the parties and the court determine in a fair and orderly fashion which facts are genuinely disputed. FTC v. Bay Area Bus. Council, Inc., 423 F.3d 627, 633 (7th Cir. 2005). ("Because of the important function local rules . . . serve in organizing the evidence and identifying disputed facts, we have consistently upheld the district court's discretion to require strict compliance with those rules."). Accordingly, I have considered plaintiffs' responses to determine whether a fact proposed by defendants is disputed, but I have not considered any new facts plaintiffs included in those responses. Cf. Ciomber v. Cooperative Plus, Inc., 527 F.3d 635, 643-44 (7th Cir. 2008) (affirming district court's decision to disregard party's submissions because he failed to comply with rule to file separate proposed findings of fact and responses).

Defendants had their own problems in their proposed findings of fact. Defendants often cited testimony in reliance on medical records without citing the medical records themselves, which violates the best evidence rule. Dye v. United States, 360 F.3d 744, 750 (7th Cir. 2004) (under Fed. R. Evid. 1002, party seeking to prove content of document generally must submit document); Dugan v. R.J. Corman R. Co., 344 F.3d 662, 669 (7th Cir. 2003) ("The meaning of quoted phrases often depends critically on the unquoted context, and it is therefore a bad practice (and will often and here violate both the 'best

evidence' rule of Fed. R. Evid. 1002 and the 'completeness' rule of Fed. R. Evid. 106) to present trial excerpts from a key document without introducing the document itself."). I have informed parties in prisoner cases before that a "party who fails to [cite supporting documents] takes the risk that his proposed findings of fact will be disregarded as inadequately supported." Wilson v. Greetan, 571 F. Supp. 2d 948, 952 (W.D. Wis. 2007). Defendants did attach stacks of medical records to their affidavits, but they did not identify where in the stack a particular record may be. Gross v. Town of Cicero, Illinois, 619 F.3d 697, 704 -05 (7th Cir. 2010) (declining to "hunt through the record to find" evidence). In this case, I considered the documents because plaintiffs did not object and the stacks were not so large that the records were difficult to find. However, I remind counsel that in future cases they must include a citation to any document they rely on or explain why they cannot do so, as required by Fed. R. Evid. 1002.

From the parties' proposed findings of fact and the record, I find that the following facts are undisputed.

UNDISPUTED FACTS

Plaintiffs Dion Mathews and Mustafa-el K.A. Ajala are prisoners at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Mathews has been housed in segregation since April 2009; Ajala has been housed in segregation since 2007.

A. Foot Pain

At some point before they were incarcerated, plaintiffs suffered injuries to their feet. Mathews hurt his left ankle playing sports and was shot in his right foot; Ajala tore his patella tendon and Achilles tendon.

1. Mathews

On December 21, 2006, Dr. Burton Cox saw plaintiff Mathews for "concerns" about his ankle. Cox ordered "replacement Velcro ankle supports" for plaintiff.

On March 26, 2007, Cox saw Mathews again for complaints of foot and ankle pain. Mathews had no swelling, but Cox ordered an x-ray because Mathews reported "some tenderness." The x-ray did not show significant bone, joint or soft tissue disease or abnormality. On May 10, 2007, Cox ordered more ankle supports for Mathews.

On June 1, 2007, Cox saw Mathews again for complaints of ankle pain. Cox ordered velcro tennis shoes for Mathews on a form labeled "Medical Restrictions/Special Needs." On June 27, 2007, Cox ordered more ankle supports for Mathews, but the order was not approved by "security" because the supports had laces instead of straps. On September 6, 2007, Cox ordered ankle supports with velcro straps.

On September 13, 2007, Cox requested physical therapy for Mathews; four sessions were approved the following day.

On November 6, 2007, Mathews refused ankle support replacements on the ground that he wanted bi-lateral supports. However, Cox concluded that bi-lateral supports were not necessary "based on [plaintiff's] medical history."

On November 7, 2007, Mathews had a consultation for physical therapy at Boscobel Area Health Care. The plan was to establish a home exercise program that Mathews could carry out in his cell.

On November 26, 2007, Mathews complained about foot pain in a health services request. A nurse told him to purchase Tylenol or ibuprofen from the canteen and to avoid the type of exercise that puts stress on his ankles.

On January 9, 2008 and February 13, 2008, plaintiff had more physical therapy sessions at Boscobel Area Health Care.

On April 13 and April 20, 2008, Mathews complained of foot pain in a health services request. Cox ordered ibuprofen and more ankle supports and scheduled an appointment.

On April 23, Cox saw Mathews. Cox placed an order for new shoes and requested a consultation with a specialist. Mathews received new shoes on April 28, 2008, but defendant David Burnett, the medical director for the Wisconsin Department of Corrections, denied the request to see a specialist. (Defendants do not explain in their proposed findings of fact why Burnett denied the request. In his affidavit, Burnett says that

"[t]here was no documentation in the request that consultation with an orthotist or that orthotics was warranted in Matthews's case." Burnett Aff. ¶ 11, dkt. #86.)

On May 7, 2008, Cox wrote an order allowing Mathews to order his own ankle supports.

On June 9, 2008, plaintiff stated in a health services request that his shoes were "grossly inappropriate and ineffective." Cox told plaintiff that "it was the best that could be done" for him.

On December 22, 2008, Cox ordered new insoles for Mathews. He received them January 5, 2009.

On March 26, 2009, plaintiff submitted an "interview/information request" in which he asked whether his "prescription" for "special needs shoes" would be filled. Defendant Mary Miller, the health services manager, stated that the health services unit "does not provide shoes." On April 19, 2009, Mathews asked for a "replacement velcro strap shoe" in a health service request. A nurse replied that the health services unit "does not replac[e] velcro strap shoes. The office in Madison ordered [the health services unit to] discontinue the practice." The "office in Madison" refers to defendants Jamses Greer (director of the bureau of health services), Cynthia Thorpe (regional nursing coordinator) and Burnett.

On April 21, 2009 Mathews submitted a health services request to Cox in which he asked about getting velcro strap shoes. The request was forwarded to defendant Miller and

the "special needs committee." On May 8, Miller replied that the health services unit "does not provide shoes."

On May 9, Mathews asked for another x-ray, but the request was denied.

On May 24 and May 27, 2009, Mathews submitted a health service request to be seen for foot pain. Cox asked Mathews whether he wanted cortisone injections. Mathews rejected that offer on the ground that he had experienced "serious adverse allergic reactions" to cortisone shots in the past. (Mathews does not cite any evidence other than his own affidavit to support his belief that he was allergic to cortisone injections.) Instead, he asked to see a specialist. Cox denied this request, writing that Mathews's "condition does not warrant podiatry referral." Mathews repeated his request on June 10, 2009. Cox replied, "I already tried that a [year] ago [and] it wasn't approved."

On October 7, 2009, Mathews wrote Cox again about foot pain. In response, Cox ordered x-rays of both of Mathews's feet. The results showed no significant degenerative change and the soft tissues appeared normal.

Mathews wrote Cox about his foot pain on November 7, 2009 and December 3, 2009. Cox replied, "I believe I've addressed your feet issue on multiple occasions already." Since December 3, 2009, Mathews has not complained to Cox or defendants about foot pain, although he was seen by medical staff at least 12 times in 2010. (Mathews says he stopped complaining about his feet because it was clear he was not going to receive

treatment.)

2. Ajala

Twice in December 2008, Ajala filed a health services request in which he complained about pain in his left foot. He requested "regular shoes with heal support. I'll pay for my own or get the ones in my property." Cox told Ajala that "there's a 'special needs' committee now that reviews and decides about things like shoes. Ask Mary Miller."

On February 23, 2009, Cox wrote an order in which he stated, "if okay with security, allow patient to have own Velcro shoes already in property." On March 16, 2009, Ajala told Cox that the property department did not have his shoes. Cox stated that he could not order new shoes for him unless his security level provided him that privilege.

Staff from the health services unit saw Ajala six times between March 16, 2009 and October 14, 2009. Ajala did not complain about foot pain during any of these visits.

On October 14, 2009, Ajala complained to Cox about pain in his heels and Achilles tendon and requested velcro strap shoes. Cox said that it "sounds more like you need to be doing Achilles stretches." (Ajala does not say whether he followed this suggestion.)

On October 17, 2009, Ajala wrote again about velcro strap shoes. Cox told Ajala that he was referring Ajala's request to the special needs committee. (The parties do not say whether Cox followed through.)

Staff from the health services unit saw Ajala four times between October 17, 2009 and December 2, 2009. Ajala did not complain about foot pain during any of these visits.

On December 3, 2009, the special needs committee denied Ajala's request for special shoes.

Staff from the health services unit saw Ajala at least seven times in 2010. Ajala did not complain about foot pain during any of these visits.

B. Cell Lighting

For safety and security reasons, prison staff are required to check on prisoners several times throughout the night. During their rounds, staff makes sure the prisoners are in their cells, not in possession of weapons or attempting to escape, not posing a harm to themselves or others and not in need of emergency medical assistance. To help officers with these tasks, cells are equipped with a 5-watt light bulb that remains on 24 hours a day. Prisoners are allowed to cover their eyes with a towel or wash cloth while sleeping.

Plaintiffs complained to defendants Peter Huibregtse (the warden) and Rick Raemisch (Secretary of the Wisconsin Department of Corrections) about being deprived of sleep. Defendants Gary Boughton and Lt. Hanfeld are responsible for enforcing the 24-hour lighting policy. A psychiatrist at the prison prescribed amitriptyline for Ajala after he complained about difficulty sleeping.

C. Dental Care

Under Health Services Policy and Procedure 400:08, a root canal treatment is generally not available for back teeth. However, the policy allows a treating dentist to perform a root canal on back teeth if (a) the patient has a medical condition that prohibits extraction, such as osteonecrosis potential; (b) the patient is unable to wear a complete or partial denture for medically documented reasons; or (c) there are no missing teeth and the arch in which a posterior root canal is needed is intact. (Plaintiffs dispute that (c) is applied in practice, but they do not cite any admissible evidence in support.)

On March 31, 2009, dentist Eva Mehija performed an examination of Ajala. Mehija informed Ajala that a posterior molar was abscessed and necrotic and that "extraction or root canal therapy" were the options. Ajala wrote a letter to defendants Burnett and Greer in which he discussed his dental condition.

On April 3 and April 15, 2009, Ajala submitted dental service requests in which he asked for a root canal. On May 7, 2009, Ajala saw another dentist, James Thorpe, who determined that the tooth was abscessed but asymptomatic. Because a root canal is not available under prison policy, Thorpe told Ajala he could have the tooth extracted or wait to be released to obtain a root canal. Ajala chose not to have the tooth extracted. If Ajala changes his mind, he may submit a request for an extraction at any time

OPINION

A. Foot Pain

I allowed plaintiffs to proceed on a claim that various prison officials were violating their rights under the Eighth Amendment by denying their requests for tennis shoes with velcro straps. 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. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

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

(1) Do plaintiffs need medical treatment?

(2) Do defendants know that plaintiffs need treatment?

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

The parties debate whether either plaintiff has or had a serious medical need with respect to his feet during the relevant time period, but I need not resolve that question because both plaintiffs have failed to show that any of the defendants acted with deliberate indifference. Plaintiff Mathews cannot deny that he received extensive care from Dr. Cox for his feet over the years. Cox saw Mathews may times regarding his complaints of foot pain and recommended various treatments, including ankle supports, physical therapy, pain medication, x-rays and cortisone injections. Although Mathews may not agree with Cox's treatment decisions, Mathews's own lay opinion is not enough to prove his claim. Berry v. Peterman, 604 F.3d 435, 441 (7th Cir. 2010). In any event, Cox is not a defendant in this case. (After defendants filed their motion for summary judgment, plaintiffs tried to amend their complaint to add Cox as a defendant, but the motion was denied as untimely. Dkt. #109.)

The focus of plaintiffs' claim is not Cox's treatment, but the decision of various officials to deny plaintiffs' requests for a particular type of shoe. Of course, prisoners are not entitled to the health care of their choice, Knight v. Wiseman, 590 F.3d 458, 466-67 (7th Cir. 2009); Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008), so defendants could not violate plaintiffs' rights by refusing to approve a request for a shoe unless plaintiffs could

show not only that defendants knew that plaintiffs had a serious medical need related to his foot, but also that the only reasonable response to that need was to provide a particular type of shoe. Mathews had not made that showing.

One problem is that plaintiffs failed to include any specific information in their proposed findings of fact regarding what any of the defendants knew about Mathews's condition. Rather, the facts show only that the special needs committee denied his requests for shoes on the ground that the health services unit did not provide shoes; plaintiffs do not show what information the committee had in front of it when the members denied the request and they fail to explain why the committee would have had any reason to believe that the shoes were a medical necessity. It is unfortunate that both Dr. Cox and the special needs committee seemed to deny any responsibility for making decisions on the requests for special shoes. Regardless, members of the special needs committee cannot be held liable for denying needed care if they were not aware that the care was needed.

Mathews's strongest potential claim is against defendant Burnett, who denied Cox's request for a referral to a specialist with little explanation. Arguably, this decision is outside the scope of Mathews's claim because he does not argue explicitly that Burnett violated his rights by not sending him to a specialist. Rather, both plaintiffs' sole focus seems to be on shoes. In any event, this claim fails with the others for a similar reason. Burnett says that he denied the request because the information he had did not justify the referral. Neither

side identifies what information he had, but it is undisputed that neither Cox's examinations nor the x-rays showed any problems. Under those circumstances, no reasonable jury could find that Burnett's decision was "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate a complete abandonment of medical judgment." Norfleet v. Webster, 439 F.3d 392, 396-97 (7th Cir. 2006) (refusal to provide soft soled shoes did not violate Eighth Amendment even though plaintiff had prescription for them previously when x-rays and lab tests showed improvement).

Ajala's claim is even weaker. The facts show only that Cox authorized Ajala to wear shoes that he believed he already owned, that the request was denied because the shoes were not located in Ajala's property and that the special needs committee later denied Ajala's request for the shoes. Although it is not clear why the committee denied the request, again, plaintiffs have failed to show that the committee was aware of any facts suggesting that Ajala had a serious medical need requiring particular shoes.

Further, as I noted in the order denying plaintiffs' motion for a preliminary injunction, neither plaintiff has demonstrated that shoes they are requesting would have a beneficial effect on their conditions. They say now that their feet improved while they had the shoes, but that view is belied at least with respect to Mathews by his own statements because he continued to complain about foot pain even when he was allowed to wear the velcro strap shoes. He said in a June 9, 2008 health services request that the shoes were

"grossly inappropriate and ineffective." In any event, plaintiffs are not qualified to testify regarding the effectiveness of the shoes.

The fact that plaintiffs failed to demonstrate their need for special shoes in the past would not necessarily defeat their claim for injunctive relief if they could show that defendants are aware now that plaintiffs need the shoes or at least some other form of follow up care that they are not receiving. However, plaintiffs have failed to meet their burden in this regard as well. Plaintiffs submitted no proposed findings of fact with their summary judgment submissions regarding the extent of their foot problems today; the evidence they submitted with their motion for a preliminary injunction was vague and conclusory, as I noted in the order denying their motion. Dkt. #56, at 4. Further, plaintiff Ajala admits in his affidavit that he is receiving treatment now in the form of physical therapy and that his condition has improved. Ajala Aff. ¶ 10, dkt. #120. It may be that Ajala would like a particular type of shoe as well, but, again, he is not entitled under the Constitution to a particular form of treatment. Ciarpaglini v. Saini, 352 F.3d 328, 331 (7th Cir. 2003) ("At best, he alleges a disagreement with medical professionals about his needs. This does not state a cognizable Eighth Amendment claim under the deliberate indifference standard.").

Although plaintiff Mathews does not say whether he is receiving treatment now, he admits that he has not complained about his foot problems to defendants or any medical staff since 2009. He says he got tired of asking for help, but defendants cannot be blamed

for failing to provide treatment not requested, particularly because plaintiffs have not shown that any of the defendants have ever been aware of specific information showing that Mathews had a serious medical need. Pinkston v. Madry, 440 F.3d 879, 892 (7th Cir. 2006).

Because plaintiffs have failed to show that there are genuine issues of material fact regarding their claim under the Eighth Amendment, I am granting defendants' motion as to this claim. However, this does not mean that either plaintiff is barred from continuing to seek treatment for any problems they have with their feet. If plaintiffs experience serious foot pain or have any other medical need, they should contact health care staff at the prison to discuss their concerns. Further, defendants should not construe this order to mean that they have no constitutional obligation to provide further treatment for plaintiffs' feet. If plaintiffs or any other prisoner make credible complaints of serious pain even after some treatment is provided, health care staff may need to pursue other options. Greeno v. Daley, 414 F.3d 645, 655 (7th Cir. 2005) (persistence in course of treatment "known to be ineffective" may violate Eighth Amendment).

B. Americans with Disabilities Act

I allowed plaintiffs to proceed on a claim that defendants were violating their rights under Title II of the Americans with Disabilities Act by failing to provide special shoes.

Under Title II, a plaintiff must show that the defendant is preventing him from participating in a program, service or activity by failing to provide a reasonable accommodation for a disability, which the Act defines as a "physical or mental impairment that substantially limits one or more of the major life activities." 42 U.S.C. § 12102(2)(A).

Although defendants included this claim in their motion for summary judgment, plaintiffs failed to address it until their reply brief. That was too late. Casna v. City of Loves Park, 574 F.3d 420, 427 (7th Cir. 2009).

Plaintiffs say that they did not address their ADA claim sooner "because defendants returned the court's mail (to Ajala) which had the court's orders disclosing the deadlines for the briefs (Dkt. 115-116), which left Ajala in the dark and having to rush to meet the deadline." Plts.' Br., dkt. #133, at 9. That statement is disingenuous. Plaintiffs have never denied that they received timely notice of defendants' October 28, 2011 motion for summary judgment and the briefing schedule. Rather, the docket entries plaintiffs cite (dkt. ##115 and 116) are orders in which the court *granted* plaintiffs' motion for an extension of time to respond to defendants' summary judgment motion. Although plaintiffs asked for a seven-day extension; the court gave them three weeks. Dkt. #109. Thus, even if plaintiffs did not receive that order right away, they had no reason to assume that they had more time than they received. Plaintiffs have no excuse for failing to include all of their arguments the first time around.

In any event, plaintiffs' argument in their reply brief regarding their ADA claim is conclusory and undeveloped. They simply state without any explanation that "the denial of velcro shoes for them prevents them from performing such daily activities as running, jogging, jumping jacks, in some instances even walking, or other lower extremity exercises." Plts.' Br., dkt. #133, at 9. That is not sufficient to allow a reasonable jury to find in their favor on this claim.

C. Cell Lighting

I allowed plaintiffs to proceed on a claim that defendants were subjecting them to 24-hour lighting, in violation of the Eighth Amendment. "A condition of an inmate's confinement such as constant illumination violates the Eighth Amendment if it denies the inmate 'the civilized measure of life's necessities,' and is the result of deliberate indifference by prison officials." King v. Frank, 371 F. Supp. 2d 977, 984 (W.D. Wis. 2005) (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). The deprivation must be "extreme"; mere discomfort is not sufficient. Hudson v. McMillian, 503 U.S. 1, 8-9 (1992).

The only facts plaintiffs proposed about this claim are that they have complained to defendants that the 5-watt bulb in their cell is depriving them of sleep and that a psychiatrist prescribed amitriptyline for Ajala when he complained about being unable to sleep. However, plaintiffs have submitted no admissible evidence for their assertion that the 5-watt

light bulb caused or exacerbated any medical problem. In other words, the facts show only that plaintiffs were subjected to 24-hour illumination, they complained of symptoms, some of their symptoms were treated by health services and plaintiffs believe that the symptoms were caused by the conditions of the segregation unit. Plaintiffs' subjective beliefs alone do not create a causal link between the illumination and their symptoms. Powers v. Dole, 782 F.2d 689,695 (7th Cir. 1986) ("Conclusory allegations that have no factual support are insufficient to create a genuine issue of material fact.").

Even if plaintiffs could prove that constant illumination subjected them to a substantial risk of serious harm, summary judgment would be appropriate nevertheless because they have not demonstrated that defendants failed to respond reasonably to any risk of harm that constant illumination might cause. Defendants permitted plaintiffs to cover their eyes with a towel or washcloth if necessary to help them sleep. (Plaintiffs disputed this fact in their responses to defendants' proposed findings of fact, but the evidence they cited did not support the dispute. Plts.' Resp. to Dfts.' PFOF ¶ 188, dkt. #118 (citing Ajala Aff. ¶ 14, dkt. #120).) In the absence of evidence showing the accommodation to be ineffective, I must consider it a reasonable response to any risk posed by the constant lighting.

Also, the facts show that defendants keep the cells lit at all times because of a need to monitor what is happening in the cells. Plaintiffs argue that defendants could use a flashlight instead of a night light, but I cannot say that it would be unreasonable for

defendants to conclude that shining a bright flashlight into each cell would be at least as disruptive to sleep as a 5-watt bulb. Accordingly, I conclude that defendants are entitled to summary judgment on this claim as well.

D. Dental Care

I allowed plaintiff Ajala to proceed on a claim that defendants violated his right to adequate dental care by refusing to perform a root canal on his teeth under a policy that requires a tooth to be extracted in any case that would require a root canal. The same standard applies to claims about dental care as to any other Eighth Amendment medical care claim: whether the defendants were deliberately indifferent to a serious medical need. Board v. Farnham, 394 F.3d 469, 479-80 (7th Cir. 2005).

The facts now show that the policy is limited to back teeth and even then a treating dentist may perform a root canal under certain circumstances. Because Ajala's problem tooth was a molar, he was given the option of having the tooth extracted or waiting until his release to have a root canal performed.

I agree with defendants that McGowan v. Hulick, 612 F.3d 636 (7th Cir. 2010), undermines plaintiff Ajala's claim. In that case, the prisoner alleged that a dentist violated his Eighth Amendment rights by extracting a tooth rather than performing a root canal. The court rejected this claim: "According to [the plaintiff], [the dentist] lied when he said that

'[the prison] doesn't do fillings,' and the purpose of the lie was to obtain permission to perform the extraction. But in the end, this dispute is over nothing but the choice of one routine medical procedure versus another, and that is not enough to state an Eighth Amendment claim." Id. at 641.

Even if I assume that a policy of extracting a back tooth rather than performing a root canal could violate the Eighth Amendment under certain circumstances, plaintiff Ajala has not shown that the policy is unconstitutional on its face or as applied to him. He has not submitted any evidence showing that the policy has endangered him in any way. Although he says in his affidavit that he believes a missing tooth "poses an even greater risk of accelerating periodontal diseases," Ajala Aff. ¶ 16, dkt. #120, he is not qualified to make that determination. Even if he were, he does not suggest that the risk is so substantial that prison officials are constitutionally required to spend hundreds of dollars to save a damaged tooth. Accordingly, I am granting defendants' motion for summary judgment on this claim as well.

ORDER

IT IS ORDERED that

1. The motion filed by plaintiffs Dion Mathews and Mustafa-el K.A. Ajala, also known as Dennis Jones-el, for leave to amend their summary judgment brief, dkt. #124, is

GRANTED.

2. The motion for summary judgment filed by defendants Rick Raemisch, Peter Huibregtse, Gary Bougton, James Greer, David Burnett, Cynthia Thorpe, Lt. Hanfeld, Mary Miller, Kammy Jones and the Wisconsin Department of Corrections, dkt. #84, is GRANTED.

3. Plaintiffs' motion for summary judgment, dkt. #108, is DENIED.

4. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 23d day of February, 2012.

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