

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

RICHARD OATES,

Plaintiff,

v.

LAURIE DOEHLING, SHARON MOERCHEN,
DR. HUIBREGTSE and
JOHN and JANE DOES 1-10, Redgranite Correctional
Institution Special Needs Committee,

Defendants.

ORDER

10-cv-816-bbc

In this proposed civil action for monetary and injunctive relief, plaintiff Richard Oates contends that defendants Laurie Doehling, Sharon Moerchen, Dr. Huibregtse and the members of the Redgranite Correctional Institution Special Needs Committee violated his rights under the Eighth Amendment by failing to provide adequate treatment for his back pain. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails

to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). After reviewing the complaint, I conclude that plaintiff that plaintiff may proceed with his Eighth Amendment claim against defendants.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Richard Oates is an inmate at the Redgranite Correctional Institution, located in Redgranite, Wisconsin. He has had multiple back surgeries in the past few years and has had severe back pain for more than a year. In March 2010, plaintiff met with defendant Huibregtse, a doctor at the Redgranite Correctional Institution. Plaintiff told Huibregtse that he was not able to sleep because of his back pain, that he felt tired constantly and that the prescription Ibuprofen was not alleviating any pain. Huibregtse prescribed another pain medication to plaintiff, but plaintiff told Huibregtse that the new medication did not work either.

In July 2010, plaintiff was taken to specialists at the University of Wisconsin hospital. The specialists ordered Tramadol for his pain. After he returned to the prison, plaintiff told

defendant Sharon Moerchen, a nurse, that he was in pain and that he was supposed to receive Tramadol. Moerchen told plaintiff he should “get used to living in chronic pain” and “deal with it.” Plaintiff contacted the health services unit regarding the pain medication, but a nurse told him that defendant Huibregste did not want plaintiff to have the medication. In October 2010, plaintiff asked defendant Laurie Doehling, the health services manager at the Redgranite Correctional Institution, about pain medication for his back. She refused to give him Tramadol.

Plaintiff has asked for an extra mattress to alleviate his back pain while he sleeps. The Special Needs Committee, which consists of a doctor, nurse, unit manager and complaint examiner, refused plaintiff’s request for an extra mattress, concluding that he could have another mattress only if he was a quadriplegic.

DISCUSSION

Prison officials have a duty under the Eighth Amendment to provide medical care to those being punished by incarceration. Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir. 1996) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state an Eighth Amendment medical care claim, a prisoner must allege facts from which it can be inferred that he had a “serious medical need” and that prison officials were “deliberately indifferent” to this need. Estelle, 429 U.S. at 104; Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

A medical need may be serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering when treatment is withheld, Gutierrez, 111 F.3d at 1371-73, “significantly affects an individual’s daily activities,” Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996) or otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825, 847 (1994).

“Deliberate indifference” means that the officials were aware that the prisoner needed medical treatment, but disregarded 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) Did plaintiff need medical treatment?
- (2) Did defendant know that plaintiff needed treatment?
- (3) Despite defendant’s awareness of the need, did defendant fail to take reasonable measures to provide the necessary treatment?

Plaintiff alleges that he suffers from serious back pain that prevents him from sleeping and causes him to feel tired all of the time. He alleges that defendants Huibregtse, Doehling, Moerchen and the members of the Special Needs Committee know about his back pain and failed to provide him pain medication, a mattress or any other effective means of treating the pain. Plaintiff has pleaded enough facts to show that his back pain qualifies as a serious

medical need; he needed treatment for his pain; and defendants failed to take reasonable measures to provide him treatment. Therefore, plaintiff has stated a claim that these defendants violated his rights under the Eighth Amendment.

Plaintiff should be aware, however, that disagreement with a doctor's medical judgment, incorrect diagnosis or improper treatment resulting from negligence is insufficient to state an Eighth Amendment claim. Gutierrez, 111 F.3d at 1374; Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996). Thus, to avoid dismissal of his claim at summary judgment or trial, plaintiff will have to prove that the treatment decisions made by the defendants who are medical professionals were "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment." Estate of Cole, 94 F.3d at 261-62. In addition, nonmedical professionals are entitled to rely on the judgment of medical professionals with respect to care provided to inmates. Burks v. Raemisch, 555 F.3d 592, 595 (7th Cir. 2009). Thus, to establish liability on the part of any John or Jane Doe defendant who is a nonmedical professional, plaintiff will have to prove that the defendant did not rely on the judgment of medical professionals in denying him treatment.

ORDER

IT IS ORDERED that

1. Plaintiff Richard Oates is GRANTED leave to proceed on his claim that defendants defendants Laurie Doehling, Sharon Moerchen, Dr. Huibregtse and Jane and John Does 1-10 violated his rights under the Eighth Amendment by failing to provide him adequate medical treatment for his back pain.

2. 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 state 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 for the defendants on whose behalf it accepts service.

3. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies

of his documents.

5. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the officials at the Redgranite Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 10th day of February, 2011.

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