

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

SHAN STAMPER,

Plaintiff,

v.

OPINION AND ORDER

10-cv-334-wmc

DR. THOMAS WILLIAMS,
BETH DITTMAN, DR. GLEN
HEINZL, DR. BRETT REYNOLDS
and CANDACE WARNER,

Defendants.

Plaintiff Shan Stamper was allowed to proceed on his Eighth Amendment claims that defendants Dr. Thomas Williams, Beth Dittman, Dr. Glen Heinzl, Dr. Brett Reynolds and Candace Warner were deliberately indifferent to his pain and its side effects. On April 20, 2011, defendants filed a motion for summary judgment based upon Stamper's failure to exhaust his administrative remedies. (Dkt. #17.) Because Stamper has failed to offer any factual or legal basis relieving him of an obligation to exhaust, defendants' motion will be granted.

FACTS¹

On April 15, 2010, while Stamper was incarcerated at the New Lisbon Correctional Institution in New Lisbon, Wisconsin, he filed an offender complaint under the Inmate Complaint Review System concerning side effects caused by the abrupt termination of his medications. His complaint was assigned "Complaint File Number NLCI-2010-8153."

¹ Because Stamper failed to respond to defendants motion, the facts provided by defendants in the affidavit of Lynn Washetas (dkt. #19) are taken as true, though viewed in a light most favorable to Stamper as the non-moving party.

This complaint concerns the same claims raised in this civil action.

Shortly thereafter, Stamper wrote the inmate complaint examiner, withdrawing his complaint. On April 19, 2010, Stamper's inmate complaint was rejected as moot. At the same time, Stamper was specifically advised in writing that he could appeal the rejection to the appropriate reviewing authority (the institution complaint examiner) within 10 calendar days pursuant to § DOC 310.11(6). Stamper did not appeal the rejection of his complaint to the reviewing authority, but a few days later he moved to reopen the complaint.

At this point, the inmate complaint examiner returned the complaint to Stamper to comply with filing requirements and to attempt to resolve the issue directly with the health services unit manager. Stamper did not re-file his complaint.

OPINION

Under Fed. R. Civ. P. 56, summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the court must view all facts and draw all inferences from those facts in the light most favorable to the non-moving party. *Schuster v. Lucent Tech., Inc.*, 327 F.3d 569, 573 (7th Cir. 2003). Nonetheless, the party that bears the burden of proof on a particular issue may not rest on its pleadings, but must affirmatively demonstrate, through the proposal of specific facts, that there is a genuine issue of material fact that requires a trial. *Hunter v. Amin*, 583 F.3d 486, 489 (7th Cir. 2009) (internal quotation omitted); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

The applicable substantive law dictates 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. *See Anderson*, 477 U.S. at 248; *Roger Whitmore’s Auto. Serv., Inc. v. Lake County, Ill.*, 424 F.3d 659, 667 (7th Cir. 2005). The court’s function on summary judgment is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for trial. *Anderson*, 477 U.S. at 249; *Hemsworth v. Quotesmith.Com, Inc.*, 476 F.3d 487, 490 (7th Cir. 2007). In this case, there is not.

Under 42 U.S.C. § 1997e(a), a prisoner must exhaust all available administrative remedies before filing a lawsuit in federal court challenging conditions of confinement, including denial of medical treatment, *Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 537 (7th Cir. 1999) (“a case filed before exhaustion has been accomplished must be dismissed.”). To satisfy exhaustion requirements, a prisoner must take all steps prescribed by the prison’s grievance system, *including pursuing any right to appeal an adverse ruling*. *Burrell v. Powers*, 431 F.3d 282, 284-85 (7th Cir. 2005); *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002). Because exhaustion is an affirmative defense, defendants bear the burden of establishing that plaintiff Stamper failed to exhaust. *Kaba v. Stepp*, 458 F.3d 678, 681 (7th Cir. 2006); *Dole v. Chandler*, 438 F.3d 804, 809 (7th Cir. 2006).

Wisconsin inmates have access to an administrative grievance system governed by the procedures set out in Wis. Admin. Code §§ DOC 310.01-310.18. Under these provisions, prisoners start the complaint process by filing an inmate complaint with the institution

complaint examiner. Wis. Admin. Code §§ DOC 310.07(1) & 310.09. An institution complaint examiner may investigate inmate complaints, reject them for failure to meet filing requirements, recommend to the appropriate reviewing authority (the warden or the warden's designee) that the complaint be granted or dismissed, or direct the inmate to attempt to resolve the complaint informally before filing a formal complaint. Wis. Admin. Code §§ DOC 310.07(2), 310.09(4).

Once the institution complaint examiner makes a recommendation that the complaint be granted or dismissed on its merits, the appropriate reviewing authority may dismiss, affirm, or return the complaint for further investigation. Wis. Admin. Code § DOC 310.12. If an inmate disagrees with the decision of the reviewing authority, he may appeal to a corrections complaint examiner, who is required to conduct an additional investigation when appropriate, and make a recommendation to the Secretary of the Wisconsin Department of Corrections. Wis. Admin. Code § DOC 310.13. Usually, the Secretary must accept the recommendation in whole or with modifications, reject it and make a new decision, or return it for further investigation within ten working days following receipt of the corrections complaint examiner's recommendation. Wis. Admin. Code § DOC 310.14. Alternatively, the Secretary may extend the time for making a decision for cause upon notice to the inmate. *Id.*

In this case, Stamper failed to appeal the rejection of his inmate complaint to the institution complaint examiner as required. Moreover, it is undisputed that Stamper was advised in writing at the time his inmate complaint was rejected, that he could appeal. Instead, he re-filed a new complaint that was returned to him for failure to comply with filing requirements.

Because defendants have met their burden of establishing that Stamper failed to exhaust his administrative remedies, their motion for summary judgment will be granted. Under the Prison Litigation Reform Act, Stamper's complaint must be dismissed without prejudice. 42 U.S.C. § 1997e(a); *Ford v. Johnson*, 362 F.3d 395, 401 (7th Cir. 2004) (dismissal for failure to exhaust is always without prejudice).

ORDER

IT IS ORDERED that:

1. The motion for summary judgment (dkt. #17) filed by defendants Dr. Thomas Williams, Beth Dittman, Dr. Glen Heinzl, Dr. Brett Reynolds and Candace Warner is GRANTED and this case is DISMISSED without prejudice for plaintiff Shan Stamper's failure to exhaust his administrative remedies.
2. The clerk of court is directed to close this case.

Entered this 28th day of October, 2011.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge