

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

SEAN C. EDGE,

Plaintiff,

v.

CORRECT CARE SOLUTIONS and
DR. IVEY,

Defendants.

OPINION AND ORDER

11-cv-832-slc¹

This is a proposed civil action under 42 U.S.C. § 1983. Plaintiff Sean Christopher Edge, a prisoner at Jackson Correctional Institution, contends that defendants Dr. Ivey and Correct Care Solutions failed to properly taper plaintiff off two medications he was taking. Plaintiff contends that this action caused him significant pain and suffering. I interpret plaintiff's complaint as a claim that defendants violated his rights under the Eighth Amendment to be free from cruel and unusual punishment by demonstrating deliberate indifference to his severe medical need. Estelle v. Gamble, 429 U.S. 97, 104 (1976).

Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and

¹ For the purpose of issuing this order, I am assuming jurisdiction over this case.

has made the necessary 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). Having reviewed the complaint, I conclude that plaintiff may proceed on his claim under the Eighth Amendment against defendant Ivey. However, I must dismiss plaintiff's claim against defendant Correct Care Solutions because his complaint contains no allegations against that defendant.

Plaintiff alleges the following facts in his complaint.

ALLEGATIONS OF FACT

Before his arrival at Jackson Correctional Institution, plaintiff Sean Christopher Edge was held in the Dane County jail. While at the jail, plaintiff was under the care of defendant Ivey, an employee of defendant Correct Care Solutions. When plaintiff arrived at the jail, he was taking three medications: Geodon, Seroquel and Lithium. At some point during defendant Ivey's treatment of plaintiff, defendant Ivey stopped plaintiff's prescription for Geodon and Seroquel completely, without allowing for a tapering off period. Plaintiff

experienced severe side effects immediately after his treatment was reduced to Lithium alone. For a time, plaintiff arranged for and received Geodon and Seroquel from his girlfriend, Liz Mair. Plaintiff obtained these medications with the assistance of a mental health worker at the jail but without the consent of defendant Ivey. One month after plaintiff resumed using Geodon and Seroquel, defendant Ivey discovered this and again limited plaintiff to Lithium alone. Plaintiff again experienced severe pain and suffering because defendant Ivey did not taper him off Geodon and Seroquel.

OPINION

A. Defendant Ivey

A plaintiff pursuing a claim under 42 U.S.C. § 1983 must show that an individual, acting under color of state law, deprived him of a right secured by the Constitution or laws of the United States. West v. Atkins, 487 U.S. 42, 48 (1988); Estate of Sims ex. rel. Sims v. County of Bureau, 506 F.3d 509, 514 (7th Cir. 2007). The medical treatment of prison inmates by prison officials is state action. West, 487 U.S. at 54. Although defendant Ivey is not a prison official, I have consistently held that employees of entities such as Correct Care Solutions may be treated as government employees for the purpose of § 1983 liability because such entities perform a function and exercise authority that is generally reserved for the state. E.g., Henderson v. Brush, No. 06-C-12-C, 2006 WL 561236, *8 (W.D. Wis. Mar.

6, 2006). See also Wilson v. McRae's, Inc., 413 F.3d 692, 693 (7th Cir. 2005) (“Private entities may be treated as state actors when the state effectively transfers authority to them.”). For the purpose of this order, I will assume that defendant Ivey was acting under color of law within the meaning of § 1983.

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 v. Gamble, 429 U.S. 97, 104 (1976); 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). A serious mental illness is considered a “serious medical need.” Sanville v. McCaughtry, 266 F.3d 724, 734 (7th Cir. 2001).

“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). When the adequacy of an inmate’s medical or mental health care is at issue, the deliberate indifference analysis requires the court to

consider the totality of the care provided. Dunigan v. Winnebago County, 165 F. 3d 587, 591 (7th Cir. 1999). When a doctor has provided a prisoner some treatment, the question is whether that treatment is constitutionally inadequate, that is, whether the doctor acted with such blatant inappropriateness as to imply that his actions or omissions were not actually based on medical judgment. Duckworth v. Ahmad, 532 F.3d 675, 679 (7th Cir. 2008). Unless medical care evidences “intentional mistreatment likely to seriously aggravate the prisoner’s condition,” a prisoner’s dissatisfaction with a doctor’s prescribed course of treatment does not give rise to a constitutional claim. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996).

Thus, plaintiff’s claim has three elements:

- (1) Did plaintiff have a medical need that required treatment?
- (2) Did defendants know that plaintiff needed treatment?
- (3) Despite defendants’ awareness of the need, did defendants fail to take reasonable measures to provide the necessary treatment?

Plaintiff’s complaint is very brief. However, he alleges sufficient facts from which reasonable inferences can be drawn regarding his serious medical need, defendant Ivey’s knowledge of plaintiff’s medical need and defendant’s failure to take reasonable measures to provide the necessary treatment. First, plaintiff alleges that he has some form of mental illness that requires prescription medication. Plaintiff does not describe his mental illness

or its seriousness. Rather, plaintiff focuses on his severe pain and suffering as a result of defendant Ivey's failure to taper him off Geodon and Seroquel. At this early stage in the litigation, plaintiff's allegations are sufficient to imply that he has a serious medical need that required treatment.

Second, plaintiff has alleged sufficient facts regarding defendant Ivey's knowledge of plaintiff's medical need for treatment. Plaintiff alleges that defendant Ivey treated his mental health need with prescription medication. This is sufficient information to imply defendant Ivey's knowledge of plaintiff's medical need.

Third, plaintiff alleges that defendant Ivey stopped plaintiff's use of Geodon and Seroquel completely and that because he did so, plaintiff he has endured severe pain and suffering. Plaintiff contests the reasonableness of defendant Ivey's medical treatment by alleging that the instructions that accompanied his medications warned against discontinuing their use immediately. Accordingly, I conclude that plaintiff has stated a claim upon which relief may be granted against defendant Ivey.

Nevertheless, in order to prevail on his Eighth Amendment claim at summary judgment or trial, it will not be enough for plaintiff to show that he disagrees with defendant Ivey's medical treatment, Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006), or even that defendant Ivey could have provided better treatment, Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008). Rather, plaintiff will have to show that any medical judgment by

defendant Ivey was “so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate” his condition. Snipes, 95 F.3d at 592 (internal quotations omitted). With regard to plaintiff’s allegations that defendant Ivey failed to taper plaintiff off Geodon and Seroquel, plaintiff will need to prove that there was no reasonable medical rationale not to take such action. The law is clear that “[m]ere differences of opinion among medical personnel regarding a patient’s appropriate treatment do not give rise to deliberate indifference.” Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996); Snipes, 95 F.3d at 591 (decision “whether one course of treatment is preferable to another” is “beyond the [Eighth] Amendment’s purview”).

B. Defendant Correct Care Solutions

For the purpose of § 1983, a private entity acting under the color of state law, such as Correct Care Solutions, is treated as though it were a municipal entity. Woodward v. Correctional Medical Services of Illinois, Inc., 368 F.3d 917, 927 n.1 (7th Cir. 2004). Liability cannot be based on a theory of vicarious liability or respondeat superior that holds a municipality responsible for the misdeeds of its employees. Woodward, 368 F.3d at 927. Rather, defendant Correct Care Solutions may be held liable only if it had a policy, custom or widespread practice that caused the unconstitutional conduct. Davis v. Carter, 452 F.3d 686, 691 (7th Cir. 2006).

Plaintiff alleges that defendant Correct Care Solutions is contracted by the Dane County jail to provide medical services. Beyond this fact, plaintiff does not allege that Correct Care Solutions directly violated his constitutional rights to medical care or that defendant Correct Care Solutions has a policy, custom or widespread practice to demonstrate deliberate indifference to the severe medical needs of patients under their care. Accordingly, I conclude that plaintiff has failed to state a claim upon which relief may be granted against defendant Correct Care Solutions.

ORDER

IT IS ORDERED that

1. Plaintiff Sean Edge is GRANTED leave to proceed in forma pauperis on his claim that defendant Ivey violated his rights under the Eighth Amendment.
2. Plaintiff is DENIED leave to proceed on his claim that defendant Correct Care Solutions violated his rights under the Eighth Amendment by failing to provide him adequate medical health care. Plaintiff's complaint is DISMISSED as to defendant Correct Care Solutions.
3. Copies of plaintiff's complaint and this order are being forwarded to the United States Marshal for service on defendant.
4. For the time being, plaintiff must send defendants a copy of every paper or

document that he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

5. 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.

6. 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 Jackson Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 7th day of February, 2012.

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