

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

DOUGLAS BALSEWICZ,

Plaintiff,

v.

TAMMY MAASSEN, KENNETH ADLER,
KEVIN CLARK and DAVID HAGGLUND,

Defendants.

ORDER

12-cv-153-bbc

In an order entered in this case on August 22, 2012, I denied plaintiff Douglas Balsewicz's motion for appointment of counsel without prejudice because it was too early in the case to determine plaintiff's ability to litigate his case on his own. Now, plaintiff has filed a renewed motion for appointment of counsel.

At this point, I am again denying plaintiff's motion without prejudice. As I explained to plaintiff in the August 22 order, if this court had enough lawyers, we would appoint an attorney in almost every case. However, this court handles over 200 new pro se lawsuits every year and there are only about 10 to 15 lawyers who are willing and qualified to accept a pro bono assignment to a prisoner lawsuit. As a result, the court has no choice but to limit appointment of counsel to the cases in which it is clear, under the appropriate test, that the plaintiff must have the assistance of a lawyer.

Plaintiff argues that counsel would do a better job in obtaining discovery, investigating the facts of his case and reviewing medical records. Plaintiff says he does not understand medical terminology and that he believes this case will require an expert witness. Although plaintiff suggests that his ability to obtain discovery is limited because of his incarceration, plaintiff has available to him all of the discovery tools described in the Federal Rules of Civil Procedure and explained in detail in this court's September 21, 2012 pretrial conference order.

In addition, plaintiff has personal knowledge of the facts surrounding his claim including the medical treatment he did or did not receive. Plaintiff should be able to access his own medical records either through the institution or through discovery to corroborate this information. Plaintiff's medical records should show how long he was deprived of appropriate treatment and what injuries resulted, if any. In addition, if the treatment plaintiff was denied and the injuries he suffered are not beyond a layperson's grasp, he will not need an expert witness. *Gil v. Reed*, 381 F.3d 649, 659 (7th Cir. 2004) (citing *Ledford v. Sullivan*, 105 F.3d 354, 360 (7th Cir. 1997)). However, even if plaintiff were to require a medical expert, he suggests no reason why he could not seek out such a professional witness on his own. This court does not appoint counsel in a case merely to shift the burden of finding and paying an expert witness.

Plaintiff does not allege any impairments, such as an inability to read or write, nor does plaintiff suggest that he has any mental impairments that would hamper his ability to litigate this case. Plaintiff's filings with the court have been clear and reflect his ability to follow directions and to respond appropriately. Plaintiff's submissions suggest that he is at least as capable as the average pro se litigant to present his claims. I encourage plaintiff to re-read the September 21, 2012 pretrial conference order. If at some point, plaintiff does not understand what to do in this case, he is free to write to the court for additional clarification about procedures. As this case progresses, it might become clear that appointment of counsel is required, but this is not clear right now, so for now I will deny plaintiff's motion. Plaintiff is free to renew his motion at a later date.

ORDER

IT IS ORDERED that plaintiff Douglas Balsewicz's renewed motion for appointment of counsel, dkt. 21, is DENIED without prejudice.

Entered this 12th day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge