IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DWAYNE ALMOND,

Plaintiff, OPINION AND ORDER

v. 12-cv-259-bbc

WARDEN WILLIAM POLLARD,
DR. SUMINICHT, M.D.,
R.N. AMY SCHRAUFNGED, R.N. S. JACKSON,
ANGLIA KROLL (ICE -PA),
DR. DAVID BURNETT, B.H.S. MEDICAL. D.,
DR. SCOTT HOFTIEZER, B.H.S. A.M.D.,
MR. JIM GREER, B.H.S. DIRECTOR,
MS. MARY MUSE, B.H.S. DIRECTOR OF NURSING,
and OFFICIAL JONES,

Defendants.

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Plaintiff Dwayne Almond, an inmate at the Waupun Correctional Institution, is proceeding on Eighth Amendment deliberate indifference claims against the above-captioned defendants for failing to treat his lower back and abdominal ailments. Plaintiff has filed a motion for summary judgment on his claims, a motion for preliminary injunctive relief and a motion for a ruling on those two motions. After considering the proposed findings of facts submitted by the parties, I will deny all three motions.

From the parties' submissions, I find the following facts to be material and undisputed.

MOTION FOR SUMMARY JUDGMENT

A. Undisputed Facts

Plaintiff Dwayne Almond has been incarcerated at the Waupun Correctional Institution since December 2, 2011. He has a history of self-reported back and abdominal pain. Plaintiff states that he is suffering from lower back pains and abdominal ailments "such as lowerback pain, lower-abdomen-infection . . . , and swelling, despite his lower abdomen infection, has started [bleeding]."

In September 2005, plaintiff was placed on the "moderate" activity level, which barred him from work involving lifting over 50 pounds and tasks involving prolonged physical exertion. At some point in the past (the document does not have a date), plaintiff has been given low bunk placement.

Before plaintiff was at the Waupun Correctional Institution, he was incarcerated at the Green Bay Correctional Institution. In February 2010, Richard Heidorn, a physician at the Green Bay prison, referred plaintiff for imaging. The imaging results showed "a minimal amount of air in [plaintiff's] small bowel."

On December 2, 2011, plaintiff found blood in his toilet (I understand him to be saying that he was bleeding from his rectum). Defendants Amy Schraufnged and Health Services official Jesse Jones were aware of this but did not inform the Health Services Unit staff or otherwise take action to help him.

On December 9, 2011, defendant Warden William Pollard and the Health Services Unit manager received a request from plaintiff asking to be seen. He was scheduled an

appointment with a nurse. Plaintiff was seen on December 12, 2011, for an annual tuberculosis review and did not mention any complaints. On December 13, 2011, he was seen on segregation rounds, but mentioned no complaints. On December 15, 2011, plaintiff was seen by a nurse for complaints of a stomach, lung and throat infection, which he claimed to have had for years. The exam and his vital signs were essentially normal; however, he was referred to an advanced care provider, as he had requested.

An occult blood test was performed on December 21, 2011. This is a three-step test that checks the stool for blood. Results were as follows: #1 positive, #2 and #3, negative. On December 22, 2011, plaintiff was seen by defendant Sumnicht for followup. Sumnicht's physical exam of plaintiff revealed the following: a normal CBC, abdominal wall, and scrotal exam. Plaintiff had no pedal edema or swelling, his speech was clear, his pharynx appeared normal (slightly red, no exudates), and his lumbar spine was normal. Sumnicht diagnosed pharyngitis, acid reflux and dry skin. He ordered a followup to further evaluate back complaints, a urinalysis and stool hemoccult test. Sumnicht also ordered medication for acid reflux, A&D ointment, Vitamin D, and magnesium oxide.

On December 29, 2011, a urine dip stick was performed, which was normal. Plaintiff was seen by a nurse on January 17, 2012, and told the nurse that he had been bleeding from his rectum for years. He was reassured that he had an upcoming appointment scheduled with a doctor. On February 7, 2012, plaintiff was seen by defendant Sumnicht for followup. Sumnicht's physical exam of plaintiff revealed that he had no constipation, no hernia in the groin area, his scrotum appeared normal, and he had one small hemorrhoid, which was

bleeding actively. After assessment, Sumnicht attempted to educate plaintiff on his health.

On March 9, 2012, plaintiff was seen by Sumnicht for followup. His assessment showed normal function with no medical indication for anything stronger for pain. On April 2, 2012, plaintiff was seen by Sumnicht for followup. Sumnicht's physical exam of plaintiff revealed no constipation, no hernia in groin, normal scrotum, and a small hemorrhoid. Plaintiff asked for a referral to an offsite provider for lower abdominal pain and bleeding from the rectum, but was informed that there was no medical indication for an offsite referral. Sumnicht requested a referral for an offsite sigmoidoscopy in light of the patient's age, his complaints of abdominal pain and blood in his stool, as well as the fact that there was no history of a routine check.

On April 12, 2012, plaintiff was scheduled for lab work, but refused it. On June 4, 2012, plaintiff was seen offsite for a colonoscopy, which was normal and reviewed by Sumnicht.

B. Opinion

Under Fed. R. Civ. P. 56, summary judgment is appropriate "when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Goldstein v. Fidelity & Guaranty Ins. Underwriters, Inc., 86 F.3d 749, 750 (7th Cir. 1996) (citing Fed. R. Civ. P. 56); see also Celotex v. Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from undisputed facts should be drawn in favor of the nonmoving party. Baron v. City of Highland Park, 195 F.3d 333, 338 (7th Cir. 1999); see also

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). However, the nonmoving party cannot simply rest upon the pleadings once the moving party has made a properly supported motion for summary judgment; instead, the nonmoving party must "set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2). "A genuine issue of material fact arises only if sufficient evidence favoring the nonmoving party exists to permit a jury to return a verdict for that party." Brummett v. Sinclar Broadcast Group, Inc., 41 F.3d 686, 692 (7th Cir. 2005). If the nonmoving party fails to establish the existence of an essential element on which that party will bear the burden of proof at trial, summary judgment for the moving party is proper. Celotex, 477 U.S. at 322.

Under the Eighth Amendment, a prison official may violate a prisoner's right to medical care 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). 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 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).

Given the facts submitted by the parties, I will deny plaintiff's motion for summary judgment. Plaintiff has failed to show that defendants have been deliberately indifferent to a serious medical need. At this point, plaintiff has a diagnosis of a hemorrhoid. Even if I

assume that this constitutes a serious medical need, plaintiff's medical records show that he has been receiving treatment. Plaintiff is simply not qualified to testify that he has a "lower abdominal infection" or that defendant Sumnicht's treatment options have violated the Eighth Amendment. When a party argues that his medical providers' treatment decisions have been made with deliberate indifference, he must show that the decisions were "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision[s] on such a judgment." Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996); Snipes v. De Tella, 95 F.3d 586, 590-91 (7th Cir.1996) (plaintiff must show that treatment decision was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate his condition").

Plaintiff has not submitted expert testimony addressing these standards. Instead, he makes mostly conclusory statements about being denied all treatment even though the medical record shows that he has received treatment. At this point, those medical records are enough to defeat plaintiff's motion for summary judgment. Moving forward, either on an eventual motion for summary judgment by defendants or at trial, plaintiff will have to present a much more detailed account explaining what medical problems he has and what each defendant did that was deliberately indifferent. In addition, he should limit his argument to the defendants that are still a part of this case. Persons working at plaintiff's previous institution have already been dismissed from the case, so plaintiff should not attempt to show the court how they have failed to treat him.

MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

"[T]he granting of a preliminary injunction is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." Roland Machinery Co. v. Dresser Industries, 749 F.2d 380, 389 (7th Cir. 1984). The standard applied to determine whether a plaintiff is entitled to preliminary injunctive relief is well established:

> A district court must consider four factors in deciding whether a preliminary injunction should be granted. These factors are: 1) whether the plaintiff has a reasonable likelihood of success on the merits; 2) whether the plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; 3) whether the threatened injury to the plaintiff outweighs the threatened harm an injunction may inflict on defendant; and 4) whether the granting of a preliminary injunction will disserve the public interest.

Pelfresne v. Village of Williams Bay, 865 F.2d 877, 883 (7th Cir. 1989). At the threshold, plaintiff must show some likelihood of success on the merits and the probability that irreparable harm will result if the requested relief is denied. If plaintiff makes both showings, the court then moves on to balance the relative harms and public interest, considering all four factors under a "sliding scale" approach. In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997). Thus, to obtain a preliminary injunction, a movant must first prove that her claim has "at least some merit." Digrugilliers v. Consolidated City of Indianapolis, 506 F.3d 612, 618 (7th Cir. 2007) (citing Cavel International, Inc. v. Madigan, 500 F.3d 544, 547 (7th Cir. 2007)).

Plaintiff has submitted essentially the same proposed findings of fact in support of his motion for preliminary injunctive relief. These facts fare no better the second time around; as discussed above, the facts show that plaintiff is receiving treatment for his

hemorrhoid and he fails to put forth enough detail to support a claim regarding any other malady he believes he has. Because plaintiff fails to show a likelihood of success on the merits of his deliberate indifference claims, I will deny his motion for preliminary injunctive relief.

ORDER

IT IS ORDERED that

1. Plaintiff Dwayne Almond's motion for summary judgment, dkt. #20, is DENIED.

2. Plaintiff's motion for preliminary injunctive relief, dkt. #32, is DENIED.

3. Plaintiff's motion for a ruling on his motions for summary judgment and preliminary injunctive relief, dkt. #36, is DENIED.

Entered this 26th day of March, 2013.

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