

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

JODY MICHAEL WAGNER,

Plaintiff,

v.

DALIA SULIENE M.D.,

Defendant.

OPINION AND ORDER

12-cv-376-bbc

In his original complaint, plaintiff Jody M. Wagner alleged that defendant Dalia Suliene and the Department of Corrections violated his rights under the Eighth Amendment by not approving surgery for his degenerative joint disease and osteoarthritis in his hip and by inadequately treating his pain. In an October 18, 2012 screening order, I dismissed defendant Department of Corrections because the department is not a person capable of being sued under 42 U.S.C. § 1983, and denied plaintiff leave to proceed on his claim that defendant Dalia Suliene did not approve hip surgery. Also, I concluded that plaintiff's other claim, that Suliene is not adequately treating his pain, should be dismissed under Fed. R. Civ. P. 8 because his allegations did not give Suliene sufficient notice of the basis for his claim against her. I gave plaintiff a short period of time to amend his complaint to include more detail about this claim.

Now plaintiff has filed a supplement to his complaint in which he alleges that

orthopedist specialist Dr. Illgen at the UW Hospital prescribed him hydrocorticosteroidal injections to manage his pain, but that defendant Suliene took no action when plaintiff requested injections in March and April 2012. Plaintiff alleges also that he has received other medication for his chronic hip pain but that it does not work and that prison staff is aware of the medication's ineffectiveness. Finally, he alleges that he eventually received injections at the UW Hospital on May 24 and August 7, 2012 (the injections are effective for about ten weeks at a time), but only in response to his filing this lawsuit.

As a general rule, prison officials are not deliberately indifferent to a prisoner's medical needs simply because they deny the prisoner the particular medical treatment of his choice. Greeno v. Daley, 414 F.3d 645, 653 (7th Cir. 2005). However, in the present case, plaintiff alleges that defendant Suliene disregarded Dr. Illgen's prescription for the hydrocorticosteroidal injections, even in the face of plaintiff's complaints that other medication given him was ineffective. These allegations are sufficient to state a claim against Suliene. Gonzalez v. Feinerman, 663 F.3d 311, 314 (7th Cir. 2011) ("physicians were obligated not to persist in ineffective treatment"); Gil v. Reed, 381 F.3d 649, 664 (7th Cir. 2004) (failure to follow specialist's instructions may be deliberate indifference); Ralston v. McGovern, 167 F.3d 1160, 1161-62 (7th Cir. 1999) (refusal to provide prescribed treatment may be deliberate indifference).

Finally, I note that plaintiff continues to argue that prison staff has acted with deliberate indifference against him by not approving him for a hip transplant. However, he was denied leave to proceed on that claim in the October 18, 2012 screening order and he

has not added any new allegations that would change my previous analysis of this claim. Therefore, this case will proceed only on plaintiff's claim regarding pain medication.

ORDER

IT IS ORDERED that

1. Plaintiff Jody M. Wagner is GRANTED leave to proceed on an Eighth Amendment deliberate indifference claim against defendant Dalia Suliene for failure to provide him with his prescribed pain treatment.

2. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint, supplement to the complaint and this order are being sent today to the Attorney General for service on the state defendant. 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 if it accepts service on behalf of the state defendant.

3. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer or lawyers will be representing defendant, he should serve the lawyers 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.

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 balance of his unpaid filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

Entered this 12th day of December, 2012.

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