

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

JESSIE WILLIAMS,

Plaintiff,

v.

GARY H. HAMBLIN, WILLIAM POLLARD,
DONALD STRAHOTA, JEFFREY GARBELMAN
and GARY ANKARLO,

Defendants.

OPINION AND ORDER

12-cv-470-bbc

Pro se plaintiff Jesse Williams has filed a proposed complaint in which he raises two claims: (1) prison officials at the Waupun Correctional Institution are failing to provide appropriate treatment for his mental illness, in violation of the Eighth Amendment; and (2) the same officials are refusing to accommodate his illiteracy by helping him read and write documents, in violation of the Americans with Disabilities Act. (Plaintiff filed the complaint with two other prisoners, Leon Irby and Jessie Broadie, but they have withdrawn from the lawsuit. Dkt. #10.) Because plaintiff is a prisoner, I must screen his complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2) and 1915A. Having reviewed the complaint, I conclude that he may proceed on both of his claims.

OPINION

A. Eighth Amendment

Plaintiff alleges that he suffers from “a mental illness,” that the conditions of his confinement in segregation are exacerbating his mental illness, that he has complained to each of the defendants about his situation and that none of them have taken any action. Prisoners have a right to receive adequate medical care for serious conditions, Estelle v. Gamble, 429 U.S. 97 (1976), which includes a right to appropriate mental health treatment. Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987); Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983); see also Gates v. Cook, 376 F.3d 323, 332 (5th Cir. 2004) (under Eighth Amendment, “mental health needs are no less serious than physical needs”); but see Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) (stating in dicta that “suicidally depressed are entitled, at most, to precautions that will stop them from carrying through; they do not have a fundamental right to psychiatric care at public expense”). Adequate care extends not just to things like medication and therapy but also to the conditions of confinement. When these “are so severe and restrictive that they exacerbate the symptoms that mentally ill inmates exhibit,” this may result in cruel and unusual punishment if the defendants are aware of the plaintiff’s plight and are refusing to take action despite an ability to do so. Jones ‘El v. Berge, 164 F. Supp. 2d 1096, 1116 (W.D. Wis. 2001).

Plaintiff does not identify the particular mental illness or illnesses from which he suffers, but he says that his symptoms are so serious that he has engaged in multiple suicide attempts, so it is reasonable to infer at this stage that he has a serious medical need.

Accordingly, I will allow plaintiff to proceed on this claim. At summary judgment or trial, plaintiff will have to come forward with specific evidence showing that he has a serious medical need, that defendants are aware of that need and that they are disregarding that need by consciously failing to take reasonable measures to provide treatment. Guzman v. Sheahan, 495 F.3d 852, 859 (7th Cir. 2007). In addition, even if plaintiff shows that his conditions of confinement are exacerbating his mental illness, he may not be entitled to relief if he does not identify any safe alternatives. Scarver v. Litscher, 434 F.3d 972, 976-77 (7th Cir. 2006).

B. Americans with Disabilities Act

The Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, prohibits discrimination against qualified persons with disabilities. Title II of the Americans with Disabilities Act states that "no qualified individual with a disability shall, by reasons of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity" 42 U.S.C. § 12132. A person is "qualified" if he is able to participate in the program, activity or service with a reasonable accommodation. 42 U.S.C. § 12131(2). I understand plaintiff to allege that he is disabled because he is illiterate and that defendants are violating the ADA by refusing to help him file grievances. (Plaintiff alleges that other prisoners helped him with this complaint.)

State prisons are considered public entities under the ADA. Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206, 210 (1998) (citing 42 U.S.C. §

12131(1)(B)). Although plaintiff did not name "a public entity" such as the Wisconsin Department of Corrections as a defendant, he may sue individuals in their official capacity for injunctive relief under Title II. Bruggeman ex rel. Bruggeman v. Blagojevich, 324 F.3d 906, 912-13 (7th Cir. 2003). Further, it is reasonable to assume at this stage that the grievance system is a "service" or "program" provided by the prison.

A person is disabled under the ADA if he has a "physical or mental impairment that substantially limits one or more of the major life activities." 42 U.S.C. § 12102(2)(A). In general, being "substantially limited" means that "a person must be 'either unable to perform a major life function, or [be] significantly restricted in the duration, manner, or condition under which the [person] can perform a particular major life activity, as compared to the average person in the general population.'" Peters v. City of Mauston, 311 F.3d 835, 843 (7th Cir. 2002) (alterations in original) (quoting Contreras v. Suncast Corp., 237 F.3d 756, 762 (7th Cir. 2001)).

Reading is a major life activity under the ADA, 42 U.S.C. § 12102(2)(A), so it follows that writing is a major life activity as well. E.g., Gonzales v. National Board of Medical Examiners, 225 F.3d 620, 630 (6th Cir. 2000) (assuming that writing is major life activity). However, being unable to read and write is not necessarily the result of a physical or mental impairment; it may be the result of a lack of education. Morisky v. Broward County, 80 F.3d 445, 448 (11th Cir. 1996). At this stage, I will infer that plaintiff has a mental impairment that substantially limits his ability to read and write. Accordingly, I will allow him to proceed against defendant Pollard. Although plaintiff does not specify a particular

defendant for this claim, as the warden of the prison, Pollard is in the best position to grant relief. At summary judgment or trial, plaintiff will have to come forward with specific evidence to prove that he has a disability within the meaning of the statute and that prison officials are failing to provide a reasonable accommodation to allow him to participate in a service, program or activity of the prison.

ORDER

IT IS ORDERED that

1. Plaintiff Jesse Williams is GRANTED leave to proceed on his claims that (1) defendants Gary Hamblin, William Pollard, Donald Strahota, Jeffrey Garbelman and Gary Ankarlo are failing to provide adequate mental health care to plaintiff and are housing him in conditions that exacerbate his mental illness, in violation of the Eighth Amendment; and (2) defendant Pollard is refusing to assist plaintiff in writing grievances, in violation of the Americans with Disabilities Act.

2. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of

documents.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. 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 for defendants.

5. Plaintiff is obligated to pay the unpaid balance of his filing fees 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 fees have been paid in full.

Entered this 10th day of October, 2012.

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