

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

JESSIE WILLIAMS,

Plaintiff,

v.

C.O. JONES and BRAEMER,

Defendants.

OPINION AND ORDER

13-cv-248-bbc

Plaintiff Jessie Williams filed a proposed complaint that included two claims, one from December 2012 about defendant Jones's alleged refusal to give plaintiff his inhaler when he suffered from an asthma attack and one from December 2009 about defendant Braemer's treatment of plaintiff while he was in an observation cell. In an order dated June 18, 2013, I told plaintiff that his complaint violated Fed. R. Civ. P. 20 because he had included unrelated claims against different defendants. Dkt. #8. I asked him to tell the court whether he wishes to proceed with his claim against defendant Jones or his claim against defendant Braemer under the number assigned to this case. In addition, I asked plaintiff to advise the court whether he wishes to pursue the other claim under a separate case number or dismiss the other claim without prejudice so that he may file it at a later date.

In his response, plaintiff says that he wishes to pursue the claim against defendant

Jones and dismiss the claim against defendant Braemer. Dkt. #9. Accordingly, I will screen the claim against Jones as required by 28 U.S.C. § 1915A and dismiss the claim against Braemer without prejudice to plaintiff's refiling it at a later date.

I understand plaintiff to contend that defendant Jones violated his rights under the Eighth Amendment by refusing to give plaintiff his inhaler while experiencing an asthma attack. A prison official may violate the Eighth Amendment 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). The condition does not have to be life threatening. Id. A medical need may be serious if it "significantly affects an individual's daily activities," Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant 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). "Deliberate indifference" means that the officials are aware that the prisoner needs medical treatment, but are disregarding the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Thus, under this standard, plaintiff's claim has three elements:

- (1) Did plaintiff need medical treatment?
- (2) Did defendants know that plaintiff needed treatment?
- (3) Despite their awareness of the need, did defendants consciously fail to take

reasonable measures to provide the necessary treatment?

I conclude that plaintiff has alleged the minimum facts necessary to state a claim under this standard. With respect to the question whether plaintiff had a serious medical need, asthma “can be, and frequently is, a serious medical condition, depending on the severity of the attacks.” Board v. Farnham, 394 F.3d 469, 484 (7th Cir. 2005); see also Garvin v. Armstrong, 236 F.3d 896, 898 (7th Cir. 2001) (“Asthma, depending upon its degree, can be a serious medical condition.”). In this case, plaintiff alleges that he was having an asthma attack, so it is reasonable to infer at this stage that he had a serious medical need.

With respect to the second and third elements, plaintiff alleges that he told defendant Jones that he was having an asthma attack and needed his inhaler but Jones refused to help him, so it is plausible to infer at this stage that Jones knew that plaintiff had a serious medical need and consciously failed to take reasonable measures to help plaintiff.

Of course, stating a claim is much easier than proving a claim. At summary judgment or trial, it will not be enough for plaintiff to say that he had difficulty breathing and asked for his inhaler. Rather, plaintiff will have to come forward with specific evidence showing that his asthma attack was so serious that it required immediate treatment *and* that defendant was aware of the need and disregarded it. E.g., Williams v. Rodriguez, 509 F.3d 392, 402 (7th Cir. 2007) (at summary judgment, asthmatic plaintiff’s statements that he “needed [his] medication,” and “can’t breathe” were not enough to show that defendants knew he had a serious medical need in light of plaintiff’s failure to adduce evidence that he “was exhibiting physical symptoms reflective of an asthma attack”).

ORDER

IT IS ORDERED that

1. Plaintiff Jessie Williams is GRANTED leave to proceed on his claim that defendant Jones refused to give plaintiff his inhaler during an asthma attack, in violation of the Eighth Amendment.

2. Plaintiff's claim against defendant Braemer is DISMISSED WITHOUT PREJUDICE to plaintiff's refiling it at a later date.

3. For the time being, plaintiff must send defendant 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 defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show 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 he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. 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 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 for defendant.

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). 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 26th day of July, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge