

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

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MICHAEL SCOTT,

Plaintiff,

OPINION and ORDER

v.

13-cv-839-bbc

ERIC KNOX OR OTHER ASSIGNED  
DIRECTOR, B/H/S Pharmacy,

Defendant.  
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Plaintiff Michael Scott, an inmate at the Green Bay Correctional Institution, has filed this lawsuit, alleging that Department of Corrections medical and pharmacy staff changed his prescription for treating a fungal infection of his foot. Plaintiff seeks leave to proceed in forma pauperis in this case but has struck out under 28 U.S.C. § 1915(g). In a January 27, 2014 order, I dismissed plaintiff's complaint because his allegations were too vague to properly state a claim under Fed. R. Civ. P. 8, stating as follows:

At this point, plaintiff has not provided enough explanation about why his rights have been violated. I understand him to be alleging that Bureau of Health Services staff failed to provide him with his prescribed medication, and instead provided a different medication. What this means is still a mystery-plaintiff confusingly states both that he has received the new medication and that he has not "been able to start taking any pills" (emphasis added). It is unclear how the provision of fluconazole [the new medication] violates his Eighth Amendment rights against cruel and unusual punishment

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It is also unclear whether plaintiff has named the proper parties as defendants. Plaintiff names "Eric Knox or other assigned director, B/H/S Pharmacy" as the defendant in this action, but it is clear from his allegations that he does not know who at the "Waupun pharmacy" switched the medications, or even whether Knox was the director of the pharmacy unit of the Bureau of Health Services at the time of plaintiff's complaint, much less whether Knox received his complaint about the switch.

Dkt. #4.

Now plaintiff has submitted an amended complaint in which he names numerous other prison officials as defendants and provides more detailed allegations. Although the complaint remains somewhat difficult to understand, I understand plaintiff to be saying that his prescribed anti-fungal medication (ketoconazole) was switched to a different anti-fungal medication (fluconazole) by either the Department of Corrections pharmacy or plaintiff's doctor. A nurse gave plaintiff a "patient communication" form stating that the ketoconazole was discontinued because "[t]here was a change with the pharmacy formula." Plaintiff makes it clear that he did not start taking the new anti-fungal medication because he "thought they would cause more harm to [his] skin, toe and foot infection." Plaintiff has contacted several prison officials asking about why the change was made, but they have not responded.

After considering plaintiff's amended complaint, I will dismiss the case for plaintiff's failure to state a claim upon which relief may be granted. As I stated in the previous order, prisoners are not entitled to receive the particular medical treatment of their choice, Forbes v. Edgar, 112 F.3d 262, 267 (7th Cir. 1997), and plaintiff does not explain how any defendant has harmed him by swapping one antifungal medication for another. To the extent that plaintiff's symptoms persist, I cannot infer that it is because of deliberate

indifference or even malpractice on the part of prison officials. Rather, plaintiff has chosen not to take the new medication because he does not think the switch has been adequately explained, but his speculation about how a medication might work cannot sustain a constitutional claim. If plaintiff takes the new medication and finds it ineffective, he might have a claim (that would belong in a brand-new lawsuit), but at this point he has not shown that any of the defendants are violating his Eighth Amendment rights.

#### ORDER

IT IS ORDERED that

1. Plaintiff's motion for leave to proceed in forma pauperis, dkt. #8, is DENIED and this case is DISMISSED for plaintiff Michael Scott's failure to state a claim upon which relief may be granted.
2. The clerk of court is directed to close the case.
3. 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). This court will notify the warden at plaintiff's institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
4. The clerk of court is directed to close the file.

Entered this 15th day of April, 2014.

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