

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

DONALD CHARLES WILSON,

Plaintiff,

v.

THOMAS H. BROUND, DAVID SCHWARZ,
MINDY SOWNEWTAG, DR. LORI ADAMS,
DR. ASHLEY THOMPSON, DR. JASON KOCINA,
DR. ALEXANDER STOLARKI, DR. KEVIN McSORLEY,
DR. THOMAS MICHLOWSKI, DR. CARLOS GAANAN,
DR. PATRICK MURPHY, JAMES GREER and JUDY SMITH,

Defendants.

OPINION and ORDER

14-cv-222-bbc

In this civil action, plaintiff Donald Charles Wilson, a prisoner at the Oshkosh Correctional Institution, contends that staff members there, as well as staff members at prisons where plaintiff resided previously, have failed to provide him adequate medical treatment for his Alzheimer's disease and neck problems. This is not plaintiff's first complaint about these problems. The first one he filed under this case number was dismissed for failure to state a claim upon which relief may be granted, but he was given leave to amend it, which he has now done.

Plaintiff has filed other lawsuits as well, including 11-cv-725-bbc and 12-cv-114-bbc, which raised claims similar to those raised in this case and which were dismissed without prejudice for plaintiff's failure to exhaust the remedies available to him in the prison's

grievance procedures before he filed the suits. He cannot go forward on those claims until he can show the court that he has used all of the remedies available to him within the prison system. With respect to the remaining claims in his amended complaint, I conclude that plaintiff may proceed in this lawsuit on his Eighth Amendment and negligence claims against defendants Dr. Patrick Murphy and Dr. Lori Adams. The rest of his complaint will be dismissed because he has failed to state a claim that can go forward in this court.

Plaintiff alleges the following facts in his proposed amended complaint.

ALLEGATIONS OF FACT

A. Parole Revocation and Incarceration at Dodge Correctional Institution

Sometime before 2003, plaintiff learned he had Alzheimer's disease and myelopathy and underwent a cervical fusion, involving the insertion of metal hardware in his neck. He experiences dementia, memory loss and confusion.

Plaintiff's parole was revoked in September 2009. Defendants parole agent, Mindy Sownewtag (plaintiff's parole agent); administrative law judge, defendant Thomas Bround; and "Administrator Division of Hearings and Appeals," defendant David Schwarz each played a role in plaintiff's revocation and refused to provide him treatment or accommodation for his medical problems.

In October 2009, plaintiff was incarcerated at the Dodge Correctional Institution, where defendant Dr. Jason Kociwia works as a psychologist. Defendant Kociwia refused to treat plaintiff and told him that he was fabricating his Alzheimer's disease. Defendant J.

Bewzal, an “offender class specialist P.R.C.” at Dodge, knew of plaintiff’s medical conditions and refused to provide treatment.

B. Transfer to Oshkosh Correctional Institution

In December 2009, plaintiff was transferred to the Oshkosh Correctional Institution. In March 2010, plaintiff requested treatment from defendant Dr. Lori Adams, a psychologist. Defendant Adams saw plaintiff and referred him to the psychiatric services unit for treatment of his Alzheimer’s and related dementia. Defendant Dr. Ashley Thompson, a psychiatrist, saw plaintiff over the course of several visits, but did not prescribe any medication. A lawyer representing plaintiff sent defendant Thompson a letter requesting medication for plaintiff, but defendant Thompson refused to prescribe any.

In March 2011, plaintiff requested treatment for his Alzheimer’s disease from defendant Dr. Kevin Sorely and defendant Dr. Alexander Stolarski, both psychologists at Oshkosh. Both defendants saw plaintiff but neither provided him any treatment or prescribed any medications.

C. Transfer to Wisconsin Resource Center

In April 2011, plaintiff was transferred to the Wisconsin Resource Center, where he was seen by defendant Dr. Thomas J. Michlowski, a psychiatrist. Defendant Michlowski ordered a CT scan and MRI for plaintiff. After receiving the results, Dr. Michlowski told plaintiff that he did not have Alzheimer’s disease but that even if he did the state would not

pay for his treatments. Defendant Michlowski did not provide any treatment or medications.

In August 2011, in response to plaintiff's complaints of pain in his neck, defendant Dr. Carlo Gaanan, a medical doctor at the Wisconsin Resource Center, saw plaintiff and diagnosed an enlarged thyroid. Defendant Gaanan ordered numerous diagnostic tests but did not prescribe medications or treatment.

In December 2011, plaintiff went to the University of Wisconsin Hospital in Madison for diagnostic testing related to his neck condition. The testing suggested that the cause of plaintiff's swelling could be a goiter or a tumor (possibly cancerous). He did not receive treatment or medications during this visit.

D. Return to Oshkosh Correctional Institution

On December 20, 2011, plaintiff was transferred to Oshkosh Correctional Institution. Plaintiff believes the transfer was ordered out of retaliation for a civil lawsuit he filed in October 2011.

In January 2012, a nurse at Oshkosh approved plaintiff's request for a low bunk and wheelchair. On February 10, 2012, plaintiff had trouble breathing and "nearly passed out." He then visited defendant Dr. Patrick Murphy, who ordered a CT scan and x-ray of plaintiff's neck.

On March 8, 2012, plaintiff was boarding a bus to take him to the University of

Wisconsin hospital for these tests when “a prison officer” took plaintiff’s ID card and room key and told him he could not leave the prison. Captain Matt Jones and social worker Corinne Kiedrowski asked plaintiff about his birth date and identification number, which he could not remember. Plaintiff was then removed from the bus and taken to the prison infirmary, where he was told by defendant Murphy that he would have to wait three to six months for treatment related to his thyroid condition. Plaintiff believes defendant Murphy ordered the cancellation of plaintiff’s appointments.

On March 27, 2012, the approval of plaintiff’s low bunk and wheelchair was revoked. Plaintiff believes defendant Murphy was responsible for the revocation.

Between March 2012 and June 2012, plaintiff continued to complain about his Alzheimer’s disease, neck problems and other ailments, such as dizziness, eye pain, loss of appetite, weight loss, chills and fever. In June 2012, plaintiff had a CT scan at the University of Wisconsin hospital. Later that month, plaintiff was seen by defendant Murphy but did not receive any medication or other treatment. In July 2012, plaintiff had a PET/CT scan at the University of Wisconsin hospital. The report revealed that plaintiff had some dental problems, including cavities, periodontal (gum) disease and periapical lucency (lesions often around the teeth that have many causes, including periodontal disease).

On August 8, 2012, plaintiff was seen by doctors at the University of Wisconsin hospital and told that he had a tumor in his neck. He was prescribed a 30-day course of clindamycin, an antibiotic. The doctor recommended a biopsy, but then said it was

unnecessary because of the antibiotic.

On August 31, 2012, plaintiff informed defendant Parole Board Commissioner Drawkiewicz of his health problems. Defendant Drawkiewicz responded that he had consulted with the health services unit and had been told that plaintiff was fabricating his medical conditions.

In September 2012, plaintiff visited the University of Wisconsin hospital for a followup visit. The doctor who saw plaintiff faxed a letter to the Oshkosh prison, in which he said that plaintiff should see an orthopedic surgeon about removing the hardware from his neck and a speech pathologist to address his difficulty swallowing. Plaintiff has not seen either of these specialists.

In January 2013, one of plaintiff's teeth broke in half, causing him pain and difficulty with eating. On January 7, 2013, plaintiff saw a dentist, defendant Dr. David Smith, who said he could not provide the treatment plaintiff required because of the problems in plaintiff's neck. (Plaintiff does not say whether defendant Smith meant the hardware or the pain and difficulty in swallowing that plaintiff experienced or why the dental treatment was impeded by the neck problems.)

In February 2013, plaintiff continued to complain about his medical problems. On March 29, 2013, plaintiff went to the University of Wisconsin hospital for a test on his neck (a video fluoroscopic swallow study), which suggested that he had pharyngeal dysphagia (the symptom of difficulty swallowing caused by problems near his pharynx). He did not receive

medications or other treatment.

On April 18, 2013, plaintiff attended a program review committee hearing staffed by board members M. Jones, T. Tess, M. Bordini and R. Mohnew. During this hearing, plaintiff requested a transfer on the ground that he was not receiving adequate medical care. The board members refused plaintiff's request, stating that plaintiff did not have the medical problems he alleged and that, in any case, the staff at Oshkosh could handle any medical problems that he had.

On April 19, 2013, plaintiff was seen by the neurosurgery department at the University of Wisconsin hospital. Plaintiff hoped to receive dental care but the hardware in his neck posed a barrier. The doctors confirmed that plaintiff's hardware would have to be removed but said that the process would be difficult and suggested that plaintiff see specialists elsewhere. When defendant Murphy still did not provide medication or treatment, plaintiff filed an "ICE complaint" on April 22, 2013, which was rejected on May 4, 2013.

On May 2, 2013, plaintiff was taken to Mercy Hospital by ambulance after nearly collapsing. The doctors at Mercy recommended that plaintiff's metal hardware be removed because it was blocking his air passages. The doctors stated that plaintiff would die if the hardware was not removed. Defendant Murphy has not done anything about this recommendation.

After requesting treatment for his Alzheimer's disease, plaintiff was called to a

meeting with defendant Dr. Lori Adams and other prison staff in which defendant Adams told plaintiff that she would not be treating him or giving him medication. (Plaintiff does not explain clearly why Adams refused to provide treatment, but he seems to suggest that it was because he did not sign a consent form at the Wisconsin Resource Center in 2011.)

On May 10, 2013, plaintiff received an MRI at the University of Wisconsin hospital, but he did not receive medication or treatment. He also made followup visits in June and July 2013.

In July 2013, plaintiff had a parole hearing. He informed defendant Parole Board Commissioner Drawkiewicz of his neck swelling and pain and his Alzheimer's disease and told defendant Drawkiewicz that he was confused and did not understand why he was at the hearing. Defendant Drawkiewicz told plaintiff that he did not care about this information and that if plaintiff was sick, he should go to the health services unit. He did not provide plaintiff treatment or medication.

On December 1, 2013, plaintiff asked to see defendant Murphy about his neck swelling and pain; as of the date plaintiff signed the complaint he filed in this case, May 14, plaintiff had not been seen by defendant Murphy.

In January 2014, plaintiff filed an "ICE complaint" regarding his medical treatment at Oshkosh, which was rejected and dismissed on appeal.

Defendant James Greer is the Director of the Bureau of Health Services within the Department of Corrections. Defendant Judy Smith is the warden of the Oshkosh

Correctional Institution. Both parties knew of plaintiff's medical ailments and refused to provide treatment or medications.

E. Lawsuits

In October 2011, plaintiff filed a lawsuit against defendants, complaining of the failure to provide him adequate medical care. 11-cv-725-bbc. In February 2012, the case was split into two suits, leaving the suit against some of the defendants in 11-cv-725-bbc, and adding a new case with claims against persons at the Wisconsin Resource Center (12-cv-114-bbc). Plaintiff amended the complaints in both lawsuits on February 2, 2013, asserting all his allegations of failure to provide medical care during the time before that date. Both of these lawsuits were dismissed for plaintiff's failure to exhaust his administrative remedies as required under the Prison Litigation Reform Act.

OPINION

A. Claims Raised in Previous Lawsuits

In his proposed amended complaint, plaintiff alleges the same facts that he alleged previously in his complaints filed in case nos. 11-cv-725-bbc and 12-cv-114-bbc. The claims asserted in those cases include claims about his medical care, negligence and alleged violation of the Americans with Disabilities Act that arose before February 2013, as well as his retaliation claim for the transfer in December 2011. Although both of the 2013 cases were

dismissed for plaintiff's failure to exhaust his administrative remedies, as required by 42 U.S.C. § 1997e(a), the dismissals were without prejudice, Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004), which means that plaintiff could file a new lawsuit raising the same claims in the event that he completed the grievance process.

Plaintiff is asserting the same claims he brought in the 2011 and 2012 cases, but he has not shown that he has exhausted his administrative remedies. Although the failure to exhaust administrative remedies is an affirmative defense, it makes no sense to allow plaintiff to proceed on the same claims that were dismissed in previous cases when they will have to be dismissed again for the same reason. Accordingly, I will not allow plaintiff to proceed on these claims until he can show that he has completed the grievance process. I will give him an opportunity to submit a supplement to his complaint with materials showing that he has exhausted his administrative remedies.

Plaintiff must keep in mind that he cannot file one lawsuit against defendants who work in different prisons, but must file separate lawsuits against the defendants in each prison and only for claims related to each of the defendants he names. Fed. R. Civ. P. 20 prohibits plaintiffs from asserting unrelated claims against different defendants in the same lawsuit. In addition, if plaintiff fails to file the supplement showing he has exhausted his administrative remedies as to the claims he filed in 2011 and 2012, he will be denied leave to proceed on these claims in this lawsuit.

B. Eighth Amendment

Plaintiff contends that defendants violated the Eighth Amendment when they failed to provide him adequate medical care after February 2013. Those claims would relate only to those asserted against defendants Murphy and Adams, both on whom are members of the medical staff at Oshkosh. (I do not understand plaintiff to be raising separate claims against the doctors and neurosurgeons at the University of Wisconsin hospital because he did not name any of them as defendants in the caption of his complaint.)

“An inmate must satisfy a two-prong test to establish an Eighth Amendment claim: (1) the deprivation alleged must be objectively serious; (2) the prison official must have exhibited deliberate indifference to the inmate’s health or safety.” Zentmyer v. Kendall County, Illinois, 220 F.3d 805, 810 (7th Cir. 2000). “[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994).

Plaintiff says that he began to see defendant Murphy in early 2012 and that defendant Murphy continues to be the doctor responsible for plaintiff’s care at Oshkosh. Plaintiff alleges that throughout 2012 and 2013 defendant Murphy merely ordered diagnostic testing and did not provide plaintiff any treatment or medication for either his

neck problem or Alzheimer's disease. Since February 2013, plaintiff says, defendant Murphy has delayed seeing him for more than five months, has not followed the recommendation of experts and has put plaintiff's life at risk by failing to pursue the removal of the hardware in plaintiff's neck, leading to delay in the treatment of plaintiff's dental problems.

Although plaintiff's allegations about Murphy's actions or inactions before February 2013 were included in his earlier litigation and cannot serve as a basis for his claims, his allegations of Murphy's failure to act after that date are sufficient to state a claim under the Eighth Amendment. At this stage of the proceedings, it is reasonable to infer that plaintiff's neck and dental problems and Alzheimer's disease are serious medical needs. Plaintiff alleges that his neck problems limit his ability to swallow and breathe; his dental problems have caused severe pain and difficulty eating; and his Alzheimer's disease has caused dementia and confusion. Zentmyer, 220 F.3d at 810 ("An objectively serious medical need is 'one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.'") (quoting Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997)).

If plaintiff's version of the facts is true, defendant Murphy may have been deliberately indifferent to plaintiff's medical needs when he refused to take steps toward removing plaintiff's hardware or failed to look into alternative actions to relieve plaintiff's pain and dental problems, delayed seeing plaintiff for more than five months and failed to provide plaintiff any medications or treatment for his Alzheimer's disease. Johnson v.

Snyder, 444 F.3d 579, 585 (7th Cir. 2006) overruled on other grounds by Hill v. Tangherlini, 724 F.3d 965 (7th Cir. 2013) (“We have further explained that deliberate indifference is ‘essentially a criminal recklessness standard, that is, ignoring a known risk.’”) (quoting Collignon v. Milwaukee County, 163 F.3d 982, 988 (7th Cir. 1998)).

With respect to defendant Adams, who works as a psychologist at Oshkosh, plaintiff says that Dr. Adams refused to treat him for Alzheimer’s disease despite his requests to be seen by the psychological services unit. As discussed above, plaintiff’s Alzheimer’s disease appears to be a serious medical condition, so defendant Adams’s alleged refusal to see plaintiff for this condition may qualify as “deliberate indifference” to a serious medical need, assuming that Adams was in a position to have provided any treatment. (As a general rule, psychologists are not authorized to prescribe medication.) To succeed on this claim, plaintiff will have to show that there is some treatment that a psychologist such as Adams could have provided him, so that it could be said that she acted with deliberate indifference when she withheld it from him.

This leaves plaintiff’s claims that members of his program review committee and defendant Drawkiewicz (whom plaintiff identifies as “Parole Board Commissioner Drawkiewicz”) were deliberately indifferent to his serious medical needs. With respect to the program review committee members, plaintiff says that he requested a transfer to a different prison so that he could receive better medical care and he informed the committee members about his medical problems, but they denied his request to transfer on the ground

that he could receive adequate medical care at the Oshkosh prison. Plaintiff has not shown that he would have been provided better medical care at another institution. It seems unlikely that he could make this showing because he was incarcerated at several different prisons before 2013 and experienced similar problems obtaining medical treatment at all of them. Further, even if another prison could provide better care than Oshkosh, the committee members' denial of a transfer is not an Eighth Amendment violation unless they *knew* the medical staff at Oshkosh would not or could not provide plaintiff appropriate medical care. Johnson, 444 F.3d at 585 ("The standard requires that an officer have 'subjective awareness' of the serious medical need and then act with indifference to that need."). Plaintiff does not allege that the program review committee had any reason to believe that Oshkosh medical staff could not or would not help plaintiff. Rather, plaintiff alleges only that the committee members said they believed Oshkosh's health services unit would provide appropriate care.

With respect to defendant Drawkiewicz, plaintiff says that he told Drawkiewicz about his medical needs during a parole hearing in July 2013 but Drawkiewicz told him that he was not concerned about these complaints and that if plaintiff needed medical attention, he should simply go to the health services unit within the prison. The Court of Appeals for the Seventh Circuit has held that prisoners do not have a right to assistance from anyone and everyone at the prison that receives a complaint. Burks v. Raemisch, 555 F.3d 592, 595 (7th Cir. 2009) ("Public officials do not have a free-floating obligation to put things to

rights, disregarding rules (such as time limits) along the way. Bureaucracies divide tasks; no prisoner is entitled to insist that one employee do another's job."). In the context of medical care in particular, prison officials are "entitled to relegate to the prison's medical staff the provision of good medical care." Id. Especially because plaintiff does not allege that Drawkiewicz had any reason to believe that plaintiff was not receiving appropriate treatment from health services, I cannot allow plaintiff to proceed on this claim. Thus, at this time, plaintiff may proceed on his claims of lack of adequate medical care only against defendants Murphy and Adams.

Plaintiff should be aware that in order to prevail on his Eighth Amendment claims against defendants Murphy and Adams at summary judgment or trial, it will not be enough for him to show that he disagrees with defendants' conclusions about the appropriate treatment for his Alzheimer's disease and his neck and dental problems, Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006), or even that defendants could have provided better treatment for these conditions. Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008). Rather, plaintiff will have to show that any medical judgment by defendants was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his conditions. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted). The law is clear that "[m]ere differences of opinion among medical personnel regarding a patient's appropriate treatment do not give rise to deliberate indifference." Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996).

C. Negligence

Plaintiff argues that “defendants” committed medical malpractice by negligence. He says defendants breached their duties of care to him when they refused to provide him appropriate medical care for his Alzheimer’s disease and his neck and dental problems. Because defendants Murphy and Adams are the only relevant defendants plaintiff discusses with respect to events after February 2013 (the filing date of the amended complaints in his previous lawsuits), they are the only defendants he may proceed against. He states a claim against them when he says that he suffered as a result of defendant Adams’s failure to provide plaintiff treatment for his Alzheimer’s disease and defendant Murphy’s failure to treat plaintiff for Alzheimer’s disease and his neck and dental problems. Paul v. Skemp, 2001 WI 42, ¶17, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865 (“In short, a claim for medical malpractice requires a negligent act or omission that causes an injury.”).

D. Americans with Disabilities Act

Under the Americans with Disabilities Act, “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. Plaintiff alleges that he is “disabled” as a result of his Alzheimer’s disease and neck problems and that he has been denied accommodations in the form of treatment for these disabilities. (It is arguable whether plaintiff has alleged sufficient facts to show that he has been

“disabled” during the relevant time period, but for the purposes of screening only, I will assume that he is a qualified disabled person.) Further, plaintiff appears to be arguing that he was denied access to the program or activity of dental treatment because of his neck problem, as shown by the refusal of defendant Dr. David Smith (a dentist), to treat his dental problems unless the hardware in plaintiff’s neck was removed and that this has still not happened.

To the extent plaintiff is seeking relief for an alleged ADA violation for the incident in January 2013 or any other incident before February 2013, those claims were dismissed in either case no. 12-cv-114-bbc for plaintiff’s failure to exhaust his administrative remedies or in case no. 11-cv-725-bbc for plaintiff’s failure to state a claim. Plaintiff has not alleged that he has cured the exhaustion defect and he has not alleged facts different from those in case no. 11-cv-725-bbc with respect to claims arising before February 2013. Thus, he cannot proceed on those claims at this time.

To the extent that plaintiff means to assert ADA claims for events arising after February 2013, he cannot proceed because he has not identified a “program or activity” from which he was excluded “by reason of” his Alzheimer’s disease or neck problems. 42 U.S.C. § 12132. It appears that plaintiff is attempting to restate his Eighth Amendment medical care claim under an ADA claim, which he may not do. Bryant v. Madigan, 84 F.3d 246, 249 (7th Cir. 1996) (The ADA “would not be violated by a prison’s simply failing to attend to the medical needs of its disabled prisoners.”). See also Resel v. Fox, 26 F. App’x 572, 577

(7th Cir. 2001) (“The ADA is an anti-discrimination statute, and Mr. Resel has not alleged that he was discriminated against because he was disabled. A claim for inadequate medical treatment is improper under the ADA.”).

With respect to his neck problems, plaintiff says he is excluded from receiving dental care. However, the reason plaintiff did not receive dental care was not because of his underlying neck problem (his neck “disability”) but because of a treatment he received for that problem (the hardware). Thus, he was not excluded “by reason of [his] disability,” 42 U.S.C. § 12132, but rather because the two treatments were incompatible. Therefore, I conclude that plaintiff has not alleged sufficient facts to state a claim under the ADA.

E. Warden and Director of the Health Services Unit

Plaintiff attempts to state claims and seek injunctive relief against defendant Judy Smith, warden of the Oshkosh Correctional Institution, and defendant James Greer, director of the Bureau of Health Services within the Department of Corrections, in their official capacities. Because plaintiff is suing these defendants in their official capacities only, he must show that the government entities for which they work maintained policies that deprived plaintiff of his rights, which he has not done. Monell v. Department of Social Services of City of New York, 436 U.S. 658, 691 n.55, 692 (1978) (“[O]fficial-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent . . . Congress did not intend municipalities to be held liable unless action

pursuant to official municipal policy of some nature caused a constitutional tort.”). Plaintiff does not argue that the failure to provide him medical care was pursuant to a state policy or custom. Thus, plaintiff cannot proceed against these defendants. Alternatively, even if plaintiff wanted to sue these defendants in their individual capacities, he has not alleged that they are *personally* responsible for the alleged deprivations of his rights. Morfin v. City of East Chicago, 349 F.3d 989, 1001 (7th Cir. 2003). Supervisory responsibility is insufficient to state a claim under § 1983. Id. Because plaintiff has not alleged facts sufficient to state a claim against these defendants, they will be dismissed from his suit.

ORDER

IT IS ORDERED that

1. Plaintiff Donald Charles Wilson is GRANTED leave to proceed on (1) his claims that defendants Dr. Patrick Murphy and Dr. Lori Adams were deliberately indifferent to his serious medical needs (either his Alzheimer’s disease and his neck and dental problems or both) in February 2013 and later and (2) defendants Murphy and Adams were negligent with respect to these medical problems in February 2013 and later.

2. Plaintiff’s amended complaint, dkt. #10, is DISMISSED without prejudice with respect to his medical care, negligence and retaliation claims arising before February 2013. In addition, the complaint is DISMISSED against defendants Thomas H. Bround, Dr. Jason Kocina, David Schwartz, Mindy Sownewtag, Dr. Asley Thompson, Dr. Alexander Stolarki,

Dr. Kevin McSorely, Dr. Carlos Gaanan and Dr. Thomas Michlowski without prejudice. Plaintiff may have until July 22, 2013 to supplement his complaint with evidence that he has completed the administrative or grievance procedures necessary for him to pursue these claims. If plaintiff does not respond by that date, he will not be allowed to proceed on those claims in this lawsuit, and the lawsuit will proceed only with respect to plaintiff's claims against defendants Murphy and Adams for their acts during and after February 2013.

3. Plaintiff is DENIED leave to proceed on his claims under the Americans with Disabilities Act, and his amended complaint, dkt. #10, is DISMISSED with respect to those claims.

4. Defendants Judy Smith and James Greer are DISMISSED from this case for plaintiff's failure to state a claim against them.

5. For the time being, plaintiff must send defendants Dr. Murphy and Dr. Adams 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.

6. 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.

7. 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 defendants. Plaintiff should not attempt to serve defendants on his own at this time. 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.

8. 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 accounts until the filing fee has been paid in full.

Entered this 8th day of July, 2014.

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