

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

---

JAMES A. LEWIS,

Plaintiff,

v.

OPINION & ORDER

14-cv-280-jdp

ANGELA MCCLEAN, MEENA JOSEPH,  
PAUL BROWN-LUCAS, JOHN HACKETT,  
SHAWN FOLEY, JOSEPH C. CICHINOWICZ,  
BRENT BROWN, JONI SHANNON-SHARPE,  
and THOMAS TAYLOR,

Defendant.

---

On October 8, 2014, I issued an opinion and order granting pro se plaintiff James A. Lewis leave to proceed on his Eighth Amendment medical care and excessive force claims, as well as his state law medical malpractice claims. Dkt. 9. I denied plaintiff leave to proceed on his state law assault, battery, and negligence claims without prejudice to give him the opportunity to supplement his complaint and demonstrate that he served notice of those claims to the attorney general before initiating this action, as is required under Wis. Stat. § 893.82. One week after I issued the order, plaintiff submitted a response with evidence that he sent notice of his claims to the attorney general.

As I explained in the October 8 order, before he can initiate an action, plaintiff must submit written notice of his claims to the Wisconsin attorney general, stating the time, date, location and the circumstances of the events giving rise to the claims, and the names of people involved. § 893.82(3). Further, because plaintiff is a prisoner, he must wait to initiate the action until either his claim has been rejected by the attorney general or 120 days have passed from service of notice. § 893.82(3m).

With his response, plaintiff filed a copy of the notice of injury and claim form, dated March 21, 2014, which he had notarized and sent. With the form, plaintiff filed his certified mail receipt. Plaintiff's response states that he sent the notice on March 23, 2014. According to plaintiff's certified mail receipt, the notice was sent on May 23, 2014. Regardless of which date is accurate, it appears from these documents that plaintiff did submit notice of his claims to the attorney general.

However, the next requirement under § 893.82 provides that a prisoner may not initiate an action "until the attorney general denies the claim or until 120 days after the written notice [] is served upon the attorney general, whichever is earlier." § 893.82(3m). Plaintiff does not suggest that he received a denial of the claim from the attorney general. Thus, to comply with § 893.82(3m), he would have to have waited 120 days after serving notice to file his complaint and initiate the action. Plaintiff filed his complaint on April 16, 2014. Whether the notice to the attorney general was sent on March 23 or May 23, plaintiff did not wait the requisite 120 days before filing his complaint. Therefore, he has not satisfied § 893.82 and he cannot proceed with his state law assault, battery, and negligence claims. Those claims will be dismissed from this case.

#### ORDER

IT IS ORDERED that plaintiff James A. Lewis is DENIED leave to proceed on his state law claims of assault, battery, and negligence. The claims are dismissed for failure to state a claim upon which relief may be granted. The case will continue on his Eighth Amendment

medical care claims, his Eighth Amendment excessive force claims, and his state law medical malpractice claims, as articulated in the previous order, Dkt. 9.

Entered this 29th day of October, 2014.

BY THE COURT:

/s/  
JAMES D. PETERSON  
District Judge