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

THADDEUS JASON KAROW,

OPINION and ORDER

Plaintiff,

v. 14-cv-395-jdp

NURSE HEYDE, NURSE ANDERSON,
DR. HANNULA, WARDEN PUGH,
JANE DOE, AND JOHN DOE NOS. 1-10,

Defendants.

Pro se plaintiff Thaddeus Jason Karow, an inmate at the New Lisbon Correctional Institution, has filed this proposed civil action under 42 U.S.C. § 1983 alleging that prison staff failed to adequately treat his severe knee pain and then unreasonably kept him shackled to his bed when he was ultimately sent to the hospital. Plaintiff has made an initial partial payment of the filing fee as directed by the court. The next step in this case is for the court to screen plaintiff's amended complaint[1] and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A.

In screening any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). After considering plaintiff's allegations, I will allow him to proceed on Eighth Amendment claims regarding his medical treatment and the unnecessarily shackling when he arrived at the hospital.

---

[1] Plaintiff initiated this case by filing a complaint, Dkt. 1, but later filed an amended complaint, Dkt. 7, which I will screen as the operative pleading.

ALLEGATIONS OF FACT

The following facts are drawn from the amended complaint. Plaintiff Thaddeus Jason Karow is currently an inmate at the New Lisbon Correctional Institution. The events central to this lawsuit took place while plaintiff was incarcerated at the Stanley Correctional Institution. On April 23, 2010, plaintiff submitted a health services request seeking medical care for severe pain in his left knee. The next day, plaintiff was seen by defendant Nurse Heyde, who performed only a cursory examination of his knee. She did not "utilize any diagnostic procedures," provide plaintiff anything for his pain, and would not schedule plaintiff to be seen by a doctor. Dkt. 7, at 6.

Later that day, plaintiff returned to the Health Services Unit because his pain had gotten even worse. Plaintiff was seen by defendant Nurse Anderson, who stated that she had contacted an "on-call" doctor. The doctor instructed her to provide plaintiff with Tylenol rather than narcotic pain medication. Anderson did nothing to diagnose plaintiff's problem and denied his request to be seen by a doctor.

On April 26, 2010, plaintiff returned to the Health Services Unit, where he was seen by defendant Dr. Hannula. Plaintiff told Hannula that his pain continued to escalate. Hannula "speculated" that plaintiff had a left quadriceps strain even though plaintiff told him that he did not injure that muscle. *Id*. at 9. Hannula did not "utilize any diagnostic procedures" to diagnose the problem. Ultimately, Hannula ordered plaintiff "electro-shock therapy" from defendant Jane Doe, a therapist. *Id*. at 10. Plaintiff asked Hannula "how electro-shock therapy was going to ascertain the cause or severity of the pain he was in," *id*., and Hannula responded that plaintiff could either accept the treatment or refuse it and go back to his housing unit.

On April 27, 2010, plaintiff was seen by defendant Jane Doe. Although plaintiff explained that he did not injure his quadriceps, Doe did not attempt to diagnose the problem

further. Within minutes of the start of the "electro-shock therapy," plaintiff told Doe to stop because it caused him "unbearable" pain. *Id*. at 11. Doe told plaintiff that she would report to Hannula about the therapy, but never did. She also never created a record of the treatment.

On April 29, 2010, plaintiff was seen by defendants Heyde and Hannula "regarding his quickly deteriorating serious medical condition." *Id*. at 12. Hannula took plaintiff's vitals and determined that he needed to be treated at Our Lady of Victory Hospital, located in Stanley, Wisconsin. Plaintiff was subsequently transferred to St. Joseph's Hospital, located in Marshfield, Wisconsin, where his knee was surgically repaired. On both legs of the trip, plaintiff was shackled by his feet and wrists. Upon admission to St. Joseph's, plaintiff's right wrist and both ankles were shackled to the bed frame. He was unshackled only when needed for treatment purposes.

For about the next week, plaintiff told the various correctional officers stationed at his bedside, defendants John Doe No. 1-10, that the shackling made it difficult to sleep and caused him pain and discomfort, particularly in his repaired knee. The Doe officers refused to remove the restraints. Defendant Warden Pugh created the policy that called for plaintiff's shackling while in the hospital.

ANALYSIS

Plaintiff states that he is attempting to bring Eighth Amendment medical care claims against prison medical staff, Eighth Amendment conditions of confinement claims against the officers who kept him shackled in the hospital, and a due process claim against Warden Pugh for creating the shackling policy.

1. Eighth Amendment medical care claims

To state an Eighth Amendment medical care claim, a prisoner must allege facts from which it can be inferred that he had a "serious medical need" and that defendants were "deliberately indifferent" to this need. *Estelle v. Gamble*, 429 U.S. 97, 104 (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). A medical need may be serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering, significantly affects an individual's daily activities, *Gutierrez v. Peters*, 111 F.3d 1364, 1371-73 (7th Cir. 1997), or otherwise subjects the prisoner to a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). "Deliberate indifference" means that the officials were aware that the prisoner needed medical treatment but disregarded the risk by failing to take reasonable measures. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

Plaintiff states that defendants Heyde, Anderson, Hannula, and Jane Doe failed to diagnose his knee problem and either ignored his pain or authorized treatment that did not work. Inadvertent error, negligence, gross negligence, and ordinary malpractice are not cruel and unusual punishment within the meaning of the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). Disagreement with a doctor's medical judgment is also insufficient to state an Eighth Amendment claim. *Gutierrez v. Peters*, 111 F.3d 1364, 1374 (7th Cir. 1997). Although it is possible that at least some of the treatment decisions made by these defendants were the result of negligence or incorrect diagnosis rather than deliberate indifference, it is too early to dismiss any of these arguable claims. Accordingly, at this point I will allow plaintiff to proceed on his medical care claims.

At the preliminary pretrial conference that will be held later in this case, Magistrate Judge Stephen Crocker will explain the process for plaintiff to identify the name of defendant Jane Doe (as well as the Doe correctional officers discussed below) and to amend the complaint to include the identities of these defendants.

2. Inappropriate use of shackles

Generally when a prisoner complains that he was retrained in a way that violated his Eighth Amendment rights, the court applies the "deliberate indifference" standard found in "conditions of confinement" cases: whether defendants consciously disregarded a substantial risk of serious harm to plaintiff. *Guzman v. Sheahan*, 495 F.3d 852, 857 (7th Cir. 2007).[2] Although this is a high standard to prove at summary judgment or trial, at this stage he has sufficiently raised Eighth Amendment claims against the John Doe correctional officers for keeping him shackled in the hospital despite his pain and discomfort.

Plaintiff casts his claim against defendant Warden Pugh as a due process claim, but it is more properly characterized as a deliberate indifference claim in the same vein as his claims against the correctional officers: that Pugh approved a policy of shackling hospitalized prisoners regardless whether they were actually a security risk. This may be a difficult claim to prove at summary judgment or trial because plaintiff will have to show that Pugh acted with deliberate

[2] The alternative would be to apply an "excessive force" analysis, which asks "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 320 (1986). The Supreme Court has explained that the excessive force standard is appropriate when "corrections officials must make their decisions 'in haste, under pressure, and . . . without the luxury of a second chance.'" *Hudson v. McMillian*, 503 U.S. 1, 6 (1992) (quoting *Whitley*, 475 U.S. at 320). This does not seem to be the case here, particularly given that plaintiff is saying that he was shackled pursuant to a prison policy.

indifference to the risk of harm, but at this point he has alleged enough for the claim to go forward.

ORDER

IT IS ORDERED that:

1. Plaintiff Thaddeus Jason Karow is GRANTED leave to proceed on the following claims:

    a. Eighth Amendment medical care claims against defendants Nurse Heyde, Nurse Anderson, Dr. Hannula, and Jane Doe.

    b. Eighth Amendment conditions of confinement claims regarding his unnecessary shackling against defendants John Does No. 1-10 and Warden Pugh.

2. Under 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. 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 on behalf of defendants.

3. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve defendants' lawyer directly rather than defendants themselves. The court will disregard any documents submitted by plaintiff unless he shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Plaintiff is obligated to pay the unpaid balance of the filing fee for this case 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 7th day of January, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge