

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

DEREK M. WILLIAMS,

Plaintiff,

v.

OPINION & ORDER

14-cv-487-jdp

DR. SCHMIDT, DR. BREEN,
DR. HAMILTON, and DR. OLBINSKI,

Defendants.

Pro se plaintiff Derek Williams, an inmate at the Green Bay Correctional Institution, has filed this proposed civil action under 42 U.S.C. § 1983 alleging that psychological staff at the prison has failed to properly treat his mental illness and placed him in unconstitutionally harsh conditions of confinement during two stints in “observation” status. Plaintiff has made an initial partial payment of the filing fee as directed by the court, and has also submitted a motion for appointment of counsel.

The next step in this case is for the court to screen plaintiff’s complaint¹ 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 medical care claims but deny him leave to proceed on his conditions of

¹ Plaintiff has submitted a new page 19 that was missing from his original complaint, which I will consider as part of the complaint going forward. *See* Dkt. 10.

confinement claims because his allegations supporting those claims are too vague. I will deny plaintiff's motion for appointment of counsel without prejudice to him refiling it at a later date.

SCREENING THE COMPLAINT

I. Allegations of Fact

The following facts are drawn from the complaint. Plaintiff Derek Williams is an inmate at the Green Bay Correctional Institution. Plaintiff has been diagnosed with depression, paranoia, personality disorder, substance abuse disorder, and post-traumatic stress disorder. In 2003, while plaintiff was incarcerated at the Waupun Correctional Institution, plaintiff became romantically involved with a staff psychologist, Alice Acor. After security staff became aware of this relationship, Acor was suspended. She later committed suicide, which caused plaintiff further psychological turmoil.

Plaintiff was transferred to the Columbia Correctional Institution. In 2006, plaintiff was recommended to be transferred away from that prison because staff there "began expressing 'biased negative opinions' about plaintiff due to the relationship with Dr. Acor." Dkt. 1, at 2. Plaintiff was transferred to the Green Bay Correctional Institution. Although plaintiff has been at GBCI since 2006, his complaint focuses on his psychological treatment from 2010 to the present day.

At least in part because of his prior experience with Dr. Acor, plaintiff is uncomfortable with being treated by female psychologists and has told this to defendant Dr. Schmidt, the "psychological supervisor," but Schmidt has regularly assigned female psychologists to plaintiff. Schmidt has also admitted to plaintiff that defendant psychologists Martha Breen, Timothy Hamilton, and Olbinski hold "biased opinions" against plaintiff because of his prior relationship with Acor and her suicide. Despite this knowledge, Schmidt has assigned Breen, Hamilton, and

Olbinski to provide psychological services to plaintiff.

In March 2010, plaintiff told defendant Breen that he was severely depressed and feeling suicidal. Breen responded, “You don’t look suicidal” and stated “you haven’t done anything yet to hurt yourself, so I’m not going to worry about it.” *Id.* at 12. Plaintiff made numerous requests for mental health treatment. Defendant Hamilton referred plaintiff to Breen. In April 2010, Breen falsely reported that plaintiff had “no reported mood or anxiety issues,” even though plaintiff was suffering from depression, paranoia, and post-traumatic stress disorder. Plaintiff suffered from sleep deprivation as a result of his maladies and the prison environment. Breen would not refer plaintiff for further psychiatric treatment for this problem. Plaintiff told defendant Schmidt about the lack of care, but Schmidt would not change plaintiff’s treating psychologist or transfer him to another institution.

On January 27, 2011, plaintiff reported that he was feeling suicidal. Defendant Hamilton met with plaintiff. I understand plaintiff to be alleging that Hamilton placed plaintiff in “observation” status and “suggested [plaintiff] give it some thought over the weekend and put a request in to [the Psychological Services Unit] if [he] needed to be seen again.” *Id.* at 14.

Plaintiff states that he was subjected to “harsh” conditions while in observation status from January 31 to February 10, 2011, including cold temperatures, constant illumination and isolation, and a thin mat to sleep on that for one 24-hour period was wet.

On January 31, 2011, plaintiff cut himself in the neck and on an arm in an attempt to kill himself. At some point the next day, defendant Breen met with plaintiff. Plaintiff informed her that he would kill himself the first chance he got. I understand plaintiff to be alleging that Breen did nothing to prevent further self-harm attempts. Later that day, plaintiff again cut his arm, “hit[ting] an artery.” *Id.* In early February 2011, plaintiff committed further acts of self-harm. Plaintiff continued to complain that defendant Breen was ignoring his statements about

feeling suicidal.

On February 17, 2011, defendant Schmidt assigned defendant Hamilton as plaintiff's primary psychologist. Hamilton authored a report about his January 27, 2011 discussions with plaintiff, falsely stating that plaintiff did not have any intention of harming himself and did not have the means to do so. Plaintiff asked for a transfer, complaining about the lack of treatment and bias on the part of his psychologists. Schmidt refused to transfer plaintiff to another institution.

On March 21, 2011, plaintiff was placed in observation for having "suicidal ideations." I can infer from plaintiff's allegations that defendant Hamilton was the staff member who made this decision. Plaintiff stayed in observation until May 16, 2011. During this time, plaintiff was isolated for 24 hours a day with no recreation. He was not provided his prescription eyeglasses. Plaintiff had to eat with his hands because he was not provided with utensils. He was limited to three squares of toilet paper at a time and had an "unsanitary" cell. He was given a thin rubber mat to sleep on with no pillow or neck support, and was woken every 15 minutes by staff.

In May 2011, defendant Schmidt assigned defendant Dr. Olbinski as plaintiff's new psychologist and scheduled "10-12" therapy sessions for plaintiff. However, halfway through these sessions, Olbinski terminated Schmidt's plan and told plaintiff that he would have to formally request sessions himself. In July 2011, plaintiff told Schmidt that his depression was worsening, his medication and meetings with Olbinski were not helping, and that he was suicidal. Plaintiff also told Olbinski and other staff about his suicidal thoughts, yet he was not placed on observation status. Ultimately, plaintiff again committed self-harm by cutting his arms.

Around this time, plaintiff was placed in general population. Plaintiff found it hard to cope in that setting. Defendant Schmidt denied plaintiff placement in a single cell because it

was helpful to have plaintiff's cellmate monitor him and report any attempts at self-harm. Plaintiff told Schmidt and Olbinski that he had lost the will to live. His depression got worse over the rest of 2011. On December 31, 2011, plaintiff told a correctional officer that he was feeling suicidal, so he wanted to be placed in observation status, as Olbinski had directed staff to do. However, plaintiff was not put in observation status. Plaintiff tried to cut his own throat with a razor but his cellmate stopped him. Plaintiff was placed in restraints.

In May 2012, defendant Olbinski delayed seeing plaintiff for almost four weeks after plaintiff sent her a request form regarding his depression. After plaintiff complained about this to defendant Schmidt, Olbinski falsely stated that she had scheduled plaintiff to see her but could not locate him. Throughout the rest of 2012, plaintiff occasionally hallucinated or heard the voice of Acor. On at least one occasion, plaintiff's hallucination of Acor urged plaintiff to cut off his finger. Plaintiff wrote to defendant Schmidt about these hallucinations and his thoughts of self-harm. I understand plaintiff to be saying that Schmidt did not respond to this correspondence.

In January 2013, plaintiff met with defendant Schmidt and discussed plaintiff "having a hard time dealing with going to the chow hall." *Id.* at 19. Schmidt agreed to place him on "feed cell" status, which I understand to mean that plaintiff's meals would be brought directly to his cell. However, Schmidt did not follow through on this.

Plaintiff continued to file complaints that his depression was overwhelming him. In November 2013, Schmidt told plaintiff that "neither himself [n]or psychological services at [GBCI] were in a position to treat [plaintiff's] mental health needs" and that Schmidt was "aware of the biased attitude of other psychological staff toward [plaintiff] for what happened involving Dr. Acor." *Id.* at 20. At one point, Schmidt tried to refer plaintiff to the Wisconsin Resource Center for further treatment, but that referral was denied.

In early December 2013, plaintiff cut himself 17 times over a three-day period. He also stopped eating for a week. In January 2014, plaintiff asked for all psychotropic medication he was receiving to be discontinued because he believed they caused his hallucinations of Acor. Plaintiff does not explain how medical staff responded. I understand plaintiff to be alleging that he continues to have suicidal thoughts, commit acts of self-harm, and suffer period of sleep deprivation. Over the last four and one-half years, defendants never placed plaintiff in “group or program therapy.”

2. Analysis

Plaintiff states that he is attempting to bring Eighth Amendment medical care and conditions of confinement claims against defendants Schmidt, Breen, Hamilton, and Olbinski for failing to properly treat his mental illnesses and periodically placing him in harsh conditions in observation.

a. 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). Plaintiff’s allegations that he suffers from serious mental health problems are sufficient to meet this standard. *See, e.g., Sanville v. McCaughtry*, 266 F.3d

724, 734 (7th Cir. 2001) (“The need for a mental illness to be treated could certainly be considered a serious medical need.”).

“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). Although plaintiff’s allegations suggest that he has received at least some form of treatment for his mental health issues—he alludes to being prescribed medications by an unnamed psychiatrist—I understand him to be saying that throughout the last four and one-half years at GBCI he has continuously complained to Schmidt, Breen, Hamilton, and Olbinski that his symptoms are not improving, yet they do not change his treatment. *See Gil v. Reed*, 381 F.3d 649, 664 (7th Cir. 2004) (“[P]hysicians were obligated not to persist in ineffective treatment.”). Moreover, at various times they have minimized or outright ignored plaintiff’s warnings about harming himself. Plaintiff surmises that his treatment is substandard in part because Breen, Hamilton, and Olbinski hold grudges against him following Acor’s suicide, and that Schmidt knew this but assigned those defendants to provide treatment to plaintiff anyway. At this point, plaintiff’s allegations are sufficient to state Eighth Amendment deliberate indifference claims against each of the defendants.²

b. Eighth Amendment conditions of confinement

I understand plaintiff to be alleging that defendant Hamilton subjected him to unconstitutionally harsh conditions of confinement for two periods in 2011 while he was placed

² However, this does not mean that every individual allegation supports an Eighth Amendment claim. For instance, it is extremely unlikely that defendant Schmidt’s assignment of female psychologists to plaintiff could demonstrate deliberate indifference toward plaintiff even given his traumatic experience regarding Acor. Also, there is no reason to infer deliberate indifference in Schmidt’s attempt to refer plaintiff to the Wisconsin Resource Center—a referral that was denied by WRC staff, not Schmidt. If anything, this shows that Schmidt was trying to provide plaintiff additional treatment.

in “observation status.” The Eighth Amendment’s prohibition against cruel and unusual punishment imposes a duty upon prison officials to provide prisoners “humane conditions of confinement.” *Farmer*, 511 U.S. at 832. Although there is no definitive test to determine whether conditions of confinement are cruel and unusual under the Eighth Amendment, the following kinds of alleged conditions have been found to rise to the level of unsanitary conditions: sleeping on a moldy and wet mattress for 59 days, *Townsend v. Fuchs*, 522 F.3d 765, 773-74 (7th Cir. 2008); a lack of sanitary conditions, including clean bedding, *Gillis v. Litscher*, 468 F.3d 488, 493-94 (7th Cir. 2006); having to live in a cell in which there was mold and fiberglass in the ventilation ducts, causing the plaintiff severe nosebleeds and respiratory problems, *Board v. Farnham*, 394 F. 3d 469, 486 (7th Cir. 2005); having to live for 16 months in a cell infested with cockroaches that crawled over the prisoner’s body, *Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir. 1996); and confinement in isolation without adequate clothing or bedding, *Maxwell v. Mason*, 668 F.2d 361, 363 (8th Cir. 1981).

At this point, plaintiff’s allegations do not meet the standards set out in the cases cited above. Some of what plaintiff alleges—isolation, lack of utensils, and constant check-ins by staff—would seem to be part of the “observation” process for handling suicidal prisoners. Other conditions, such as the uncomfortable sleeping arrangements, do not make out constitutional claims. *See Martin v. Tyson*, 845 F.2d 1451, 1457 (7th Cir. 1988) (no constitutional right to a pillow). A wet mattress pad is a substandard condition, but here it was a short-term condition that cannot constitute a claim on its own.

Other of plaintiff’s allegations might support a claim but are too vague at this point. *See* Fed. R. Civ. P. 8(a)(2) (pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief”). Plaintiff states that the observation cell was cold, but he does not explain how cold, what clothing he was given, or ultimately how he was harmed by the

condition. Similarly, plaintiff says that the conditions were “unsanitary,” but that description is far too vague to support a claim. Finally, depending on how poor plaintiff’s eyesight is, not being allowed eyeglasses could have made it extremely difficult to cope with the already isolating conditions, but plaintiff does not explain how poor his eyesight is or how he was harmed.

Plaintiff is free to file an amended complaint explaining his conditions of confinement claims in more detail, but for now those portions of his complaint must be dismissed.

RECRUITMENT OF COUNSEL

Plaintiff has filed a motion for appointment of counsel, Dkt. 5. The term “appoint” is a misnomer, as I do not have the authority to appoint counsel to represent a pro se plaintiff in this type of a case; I can only recruit counsel who may be willing to serve in that capacity. To show that it is appropriate for the court to recruit counsel, plaintiff must first show that he has made reasonable efforts to locate an attorney on his own. *See Jackson v. Cnty. of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992) (“the district judge must first determine if the indigent has made reasonable efforts to retain counsel and was unsuccessful or that the indigent was effectively precluded from making such efforts”). Plaintiff attached several rejection letters from area attorneys, which is sufficient to show that plaintiff has made reasonable efforts.

A court will seek to recruit counsel for a pro se litigant only when he demonstrates that his case is one of those relatively few in which it appears from the record that the legal and factual difficulty of the case exceeds his ability to prosecute it. *Pruitt v. Mote*, 503 F.3d 647, 654–55 (7th Cir. 2007). Although some of the medical issues raised by plaintiff suggest that the case may indeed outstrip his abilities to litigate his claims, it is too early to conclusively make that determination. In particular, the case has not even passed the relatively early stage in which defendants may file a motion for summary judgment based on exhaustion of administrative

remedies, which often ends up in dismissal of cases such as plaintiff's before they advance deep into the discovery stage of the litigation. Should the case pass the exhaustion stage and plaintiff believes that he is unable to litigate the suit himself, he may renew his motion.

ORDER

IT IS ORDERED that:

1. Plaintiff Derek Williams is GRANTED leave to proceed on Eighth Amendment medical care claims against defendants Dr. Schmidt, Martha Breen, Timothy Hamilton, and Dr. Olbinski.
2. Plaintiff is DENIED leave to proceed on his conditions of confinement claims, and that portion of the complaint is DISMISSED under Fed. R. Civ. P. 8.
3. Plaintiff's motion for the court's assistance in recruiting him counsel, Dkt. 5, is DENIED without prejudice.
4. 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.
5. 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.
6. 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.

7. 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 January 26, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON

District Judge