

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

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JAMES TURNER,

Plaintiff,

v.

OPINION & ORDER

15-cv-23-jdp

JOHN DOE, MEREDITH MASHAK,  
LUCAS WOGERNESE, KEISHA PERRNOUD,  
CHARLES FACKTOR, CINDY O'DONNELL,  
and RYAN BLOUNT,

Defendants.

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Plaintiff James Turner, a prisoner in the custody of the Wisconsin Department of Corrections at the Columbia Correctional Institution, has filed a complaint alleging that prison officials have interfered with back and leg therapy ordered by a doctor. He seeks leave to proceed with his case *in forma pauperis*, and he has already made an initial partial payment of the filing fee previously determined by the court.

The next step is for the court to screen the complaint and dismiss any portions that are legally frivolous, malicious, fail to state a claim upon which relief may be granted, or ask 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 plaintiff to proceed on Eighth Amendment claims against several of the defendants but dismiss the defendants who are not explicitly alleged to have harmed plaintiff.

## ALLEGATIONS OF FACT

Plaintiff James Turner is an inmate at the Columbia Correctional Institution. On September 20, 2014, defendant John Doe, an employee in the Health Services Unit, cancelled therapy for plaintiff's back and leg pain even though a doctor had ordered it for three months. I understand plaintiff to be saying that the therapy was cancelled because plaintiff failed to show up to an August 2014 therapy appointment, but plaintiff missed the appointment through no fault of his own, because he did not receive a pass to go to the appointment. Defendant Doe did not check with plaintiff before cancelling the therapy.

Plaintiff filed an inmate grievance about the cancellation. Defendant Nurse Meredith Mashak investigated and ultimately concluded that plaintiff's therapy had appropriately been cancelled for "noncompliance." Complaint examiners Ryan Blount, Charles Facktor, and Cindy O'Donnell all agreed with this decision.

Plaintiff tried to reinstate the therapy but has not yet seen his physician (whom he does not name as a defendant).

## ANALYSIS

I understand plaintiff to be bringing claims under the Eighth Amendment for defendants' decisions to terminate his prescribed back and leg therapy for reasons out of plaintiff's control. The Eighth Amendment prohibits prison officials from acting with deliberate indifference to prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103-04 (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 alleges that he was prescribed therapy for his back and leg pain. Although this is a fairly vague allegation, construing the complaint generously I conclude that it is sufficient to show that plaintiff has a serious medical need. He further alleges that defendant Doe terminated the therapy and defendants Mashak, Blount, Facktor, and O'Donnell denied his grievance about the termination even though the ground for termination, that plaintiff missed a session, was not plaintiff's fault. At this early stage of the proceedings, this is sufficient to show defendants' deliberate indifference to his medical need, so I will allow him to proceed on Eighth Amendment claims against these defendants.

At the preliminary pretrial conference that will be held later in this case, Magistrate Judge Stephen Crocker will explain the process for plaintiff to use discovery to identify the name of the Doe defendant and to amend the complaint to include the proper identity of that defendant. Plaintiff does not include any allegations of wrongdoing by defendants Wogernese and Perrnoud so I will dismiss them from the lawsuit.

I caution plaintiff that at summary judgment or trial it will not be enough for plaintiff to show that defendants were negligent in making their decisions. If defendants' decisions were based on a mere misunderstanding, they did not violate the Eighth Amendment. Rather, to show a constitutional violation plaintiff will have to show that they intentionally or recklessly disregarded his medical need by making the decisions they did. *Miller v. Smith*, 220 F.3d 491, 495 (7th Cir. 2000).

ORDER

IT IS ORDERED that:

1. Plaintiff James Turner is GRANTED leave to proceed on Eighth Amendment claims against defendants John Doe, Meredith Mashak, Ryan Blount, Charles Facktor, and Cindy O'Donnell.
2. Defendants Lucas Wogernese and Keisha Pernoud are DISMISSED from the case.
3. 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.
4. 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.
5. 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.

Entered July 6, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge