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

CHRISTOPHER GOODVINE,

Plaintiff, OPINION AND ORDER

v. 16-cv-416-wmc

MR. ECKSTEIN, Warden, *et al.*,

Defendants.

Pro se plaintiff Christopher Goodvine brings this proposed civil action pursuant to 42 U.S.C. § 1983, alleging that staff at the Green Bay Correctional Institution ("GBCI") are violating his rights under the constitution and Religious Land Use and Institutionalized Persons Act ("RLUIPA") by holding him segregation, denying him the medication he needs to treat his serious mental health needs, and denying him the opportunity to participate in Ramadan. He has also moved for a preliminary injunction.

Goodvine has not yet paid the filing fee for this action, nor has he filed a motion requesting leave to proceed *in forma pauperis*. Instead, he has requested that the court immediately screen his complaint because he is imminent danger of seriously harming himself if defendants continue to hold him in segregation without his medication. Normally, the court would not screen an inmate's complaint under 28 U.S.C. § 1915A without either receiving the filing fee or granting the inmate leave to proceed without payment of the fee. In this case, however, Goodvine's alleges facts that, if found to be true, may result in imminent danger of serious harm, particularly given his history of mental illness and self-harming behavior. Under such circumstances, the court will proceed directly with screening his complaint and consideration of his motion for a preliminary injunction.

After reviewing the complaint, the court concludes that Goodvine may proceed with his Eighth Amendment claims based on his placement in segregation and denial of medication, despite concerns about his apparent failure to exhaust administrative remedies before filing suit. For the same reasons, the court will also direct defendants to respond to his motion for a preliminary injunction and will schedule a telephonic conference to discuss plaintiff's current status. The court will, however, dismiss Goodvine's claims regarding his participation in Ramadan, because he concedes that he failed to exhaust his administrative remedies with respect to those claims. Without minimizing the possible impact to Goodvine himself in being denied participation (if, in fact, this is so), there appears to be no risk of imminent danger as a result of him not fasting for Ramadan. Finally, although the court is allowing Goodvine to proceed with his Eighth Amendment claims, he must either pay the full filing fee or file a motion for leave to proceed *in forma pauperis* by July 13, 2016, or the court may be required to dismiss the case.

OPINION

A. Eighth Amendment Claims

Plaintiff has a long history of serious mental illness that causes him to engage in acts of self-harm. His suicidal and self-harming attempts often increase when he is incarcerated, and particularly when he is held in segregation. In mid-March 2016, plaintiff was transferred to the GBCI. He was adjusting well after being placed in general population, with no incidents of self-harm, but was placed in segregation in May 2016 after a relatively minor rule violation. Once he was in segregation, plaintiff attempted suicide twice. After the second time, in which he overdosed on several pills he had been hoarding, defendants Eckstein (the warden),

Kind (the security director), Francois (the programs supervisor in segregation), and Vandewalle (the security supervisor in segregation), allegedly directed defendants Dr. Stonefield (plaintiff's psychiatrist) and Ms. Lutsen (the supervisor of the health services unit) to discontinue plaintiff's prescriptions for antidepressants and antipsychotic medications. Stonefield and Lutsen did so without consulting plaintiff. Since then, plaintiff alleges both that his urges to harm himself have increased and that he has severely cut himself. According to plaintiff, defendants Dr. Ankarlo (the psychological services director) and Dr. Ching (plaintiff's primary clinician) have nevertheless refused to offer plaintiff any meaningful psychological care.

These allegations are sufficient to state a claim upon which relief may be granted under the Eighth Amendment. Prison officials have a well-established duty under the Eighth Amendment to protect prisoners from harming themselves as a result of a mental illness. *Minix v. Canarecci*, 597 F.3d 824, 833 (7th Cir. 2010); *Cavalieri v. Shepard*, 321 F.3d 616 (7th Cir. 2003). A prison official violates that duty if he or she is aware of but disregards a substantial risk that the plaintiff would seriously harm himself by failing to take reasonable measures to abate it. *Farmer v. Brennan*, 511 U.S. 825 (1994). Here, plaintiff's allegations that defendants placed him in segregation, and then deprived him of his medications and any meaningful psychological treatment, suggest that he faces a substantial risk of serious harm, as well as that defendants are failing to take reasonable measures to address it. At this stage, he may proceed against all of the named defendants, as he has alleged that all defendants were personally involved in the decisions and actions that deprived him of his medications and denied him further treatment.

Although plaintiff's allegations are sufficient to state an Eighth Amendment claim, his

allegations raise a question whether his claims should be dismissed for failure to exhaust his administrative remedies before filing suit. The Prison Litigation Reform Act requires all inmates to exhaust all available administrative remedies before suing in federal court. 42 U.S.C. § 1997e(a); *Woodford v. Ngo*, 548 U.S. 81, 85 (2006). The exhaustion requirement "applies to all inmate suits," *Porter v. Nussle*, 534 U.S. 516, 524 (2002), and requires a prisoner-plaintiff to "properly take each step within the administrative process . . . in the place, and at the time, the prison's administrative rules require." *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002). *See also Burrell v. Powers*, 431 F.3d 282, 284-85 (7th Cir. 2005). If a prisoner does not exhaust all available remedies, the court must dismiss the case. *Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 535 (7th Cir. 1999).

Here, plaintiff concedes in his materials that he chose to file before completing the exhaustion process. (Dkt. #4 at ¶ 33.) Plaintiff alleges that after telling his doctor that he was feeling imminently suicidal without his medications and that the grievance process usually takes four to six months, his doctor encouraged him to file this lawsuit if he believed the court would be able to intervene more quickly than the prison would. (*Id.* at ¶ 33.)

While there is no futility exception to exhaustion, *Perez*, 182 F.3d at 536,[1] there may be an exception for inmates who allege that they are in imminent danger and that the administrative process could offer no possible relief to prevent the imminent danger from becoming actual harm. *Fletcher v. Menard Correctional Center*, 623 F.3d 1171, 1173 (7th Cir. 2010) ("If a prisoner has been placed in imminent danger of serious physical injury by an act that violates his constitutional rights, administrative remedies that offer no possible relief in

[1] As the Seventh Circuit has explained, "[n]o one can *know* whether administrative requests will be futile; the only way to find out is to try." *Id.* (emphasis in original).

time to prevent the imminent danger from becoming an actual harm can't be thought available."). The court can find no case in which the Seventh Circuit has actually applied this exception, though that court has given the following example of when it *might* do so:

> Suppose the prison requires that its officials be allowed two weeks to respond to any prisoner grievance and that before the two weeks are up there can be no action taken to resolve it. An administrative remedy could not be thought available to a prisoner whose grievance was that he had been told that members of the Aryan Brotherhood were planning to kill him within the next 24 hours and the guards were refusing to take the threat seriously.

Id.

Certainly, plaintiff's allegations of imminent danger are not as seemingly concrete, immediate or even severe as those provided in the example above. Moreover, under Wisconsin's grievance system, inmate grievances must be reviewed within 5 days, priority must be given to complaints dealing with "health or personal safety," and situations in which grievance procedures could "subject the inmate to substantial risk of personal injury or cause other serious and irreparable harm" must be referred to the "appropriate reviewing authority." Wis. Admin. Code § DOC 310.11(2), (3), (7).

Even so, the plaintiff does allege contours of the imminent danger exception to exhaustion. Moreover, exhaustion is an affirmative defense, which the court will not ordinarily invoke to dismiss at the screening stage unless obvious from the pleadings. Defendants may well be able to raise a viable exhaustion defense early in this case. At this stage, however, the court cannot definitively conclude that plaintiff's Eighth Amendment claims should be dismissed for failure to exhaust his administrative remedies. Accordingly, the court will allow service of these claims.

As alluded to at the outset of this opinion, the court will also require defendants to

respond to plaintiff's motion for a preliminary injunction with respect to these same claims. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *D.U. v. Rhoades*, No. 15-1243, -- F.3d --, 2016 WL 3126263, at *2 (7th Cir. June 3, 2016) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). The court cannot conduct this evaluation by reviewing defendants' response to plaintiff's allegations alone, but at this stage, plaintiff has shown that he has a likelihood of success on his Eighth Amendment claim and that he is likely to suffer irreparable harm in the absence of preliminary relief. Therefore, defendants will be required to respond. The court will also set a telephone hearing to discuss the status of plaintiff's placement, medications and other mental health needs and to determine whether an evidentiary hearing is necessary.

B. Ramadan Claims

Plaintiff also asserts unrelated claims arising out of denial of his ability to participate in fasting during Ramadan. He alleges that GBCI implemented a rule requiring inmates that wished to fast during Ramadan to notify the administration 60 days in advance of Ramadan, or by April 7, 2016. Plaintiff arrived at the prison in mid-March, but claims to have been unaware of the deadline for signing up. He asked about participating in Ramadan in late-April and May 2016, but by then the chaplain advised that it was too late. Plaintiff argues that depriving him of the ability to participate in Ramada violates his rights under the First Amendment and RLUIPA.

Although plaintiff's allegations suggest that he may have meritorious claims under the

First Amendment and RLUIPA, these claims must be dismissed because plaintiff concedes that he has failed to exhaust his administrative remedies prior to filing suit. (Dkt. #1, ¶ 25.) *See Jones v. Bock*, 549 U.S. 199, 212 (2007) (court may dismiss if failure to exhaust is clear on face of the complaint). Unlike his Eighth Amendment claims, plaintiff's allegations do not suggest that depriving him of participation in Ramadan presents imminent danger to his health or safety. Accordingly, these claims will be dismissed without prejudice, subject to plaintiff refiling after he has exhausted them at the administrative level.

ORDER

IT IS ORDERED that:

1. Plaintiff Christopher Goodvine is GRANTED leave to proceed on his Eighth Amendment claims against defendants Eckstein, Kind, Francois, Vandewalle, Stonefield, Lutsen, Ankarlo and Ching.

2. Plaintiff is DENIED leave to proceed on his claims under the First Amendment and RLUIPA for failure to exhaust available administrative remedies as required by 42 U.S.C. § 1997a(e). Those claims are DISMISSED without prejudice.

3. Pursuant to an informal 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 the 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 for the defendants.

4. Defendants are directed to file a response to plaintiff's motion for a preliminary injunction by July 13, 2016 at 12:00 p.m. A telephone conference will be held on Friday, July 15, 2016 at 12:30 p.m. to discuss the status of plaintiff's placement at GBCI, his medications, whether he is receiving any mental health treatment and whether an evidentiary hearing is needed to resolve plaintiff's motion for a preliminary injunction.

5. Plaintiff must pay the $400 filing fee for this lawsuit, or file a motion for leave to proceed *in forma pauperis*, along with a current trust fund account statement, by July 13, 2016. If he does not do so by that date, the court may dismiss this

case.

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

7. 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.

8. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 6th day of July, 2016.

BY THE COURT:

/s/

_____
WILLIAM M. CONLEY
District Judge