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

JAMILA GATLIN,

Plaintiff,

v.

SHERIFF DAVID MAHONEY, DEPUTY WALKER, DR. SYED, LT. TRIGGS, and DANE COUNTY JAIL STAFF RESPONSIBLE (NAMES UNKNOWN),

Defendants.

OPINION & ORDER

Case No. 19-cv-803-wmc

Plaintiff Jamila Gatlin brings this action under 42 U.S.C. § 1983 against defendants former Sheriff David Mahoney, Deputy Walker, Dr. Syed, Lt. Triggs and "Dane County Jail Staff." Gatlin claims that Dane County Jail employees violated her constitutional rights in failing to provide adequate treatment for her asthma and subjecting her to inhumane conditions of confinement. Her complaint is now before the court for screening pursuant to 28 U.S.C. § 1915A. After review, the court concludes that Gatlin may proceed on claims against Mahoney and Dr. Syed, but the remaining defendants will be dismissed.

ALLEGATIONS OF FACT[1]

Gatlin arrived at the Dane County Jail on May 30, 2019, at which point she was placed in the Public Safety Building. The next day she was moved to the City County Building, where she immediately noticed that there was something wrong with the

[1] Courts must read allegations in *pro se* complaints generously, resolving ambiguities and drawing reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

ventilation system. The smell of urine and feces was strong, it was humid and there did not appear to be a natural source of air.

Gatlin suffers from asthma that requires the use of an emergency inhaler, and she suffers from claustrophobia. She asked an unknown deputy for her inhaler, who told her to submit a request slip for a medical appointment. When she followed up by asking why she would need to make an appointment during an emergency, the deputy closed the door in her face. For the next 72 days, Gatlin continued to have serious breathing problems. Additionally, she was never offered outdoor recreation or opportunities for fresh air, and she was unable to drink water to avoid coughing attacks because she has been instructed to run the water for two minutes due to toxic lead levels in the water. She adds that she also saw black worms and flies in the water, and when she complained about these issues, she received a response telling her to clean her cell using an available cleaning bucket. During this time Gatlin submitted numerous written requests to be moved, which staff denied, explaining that she would be moved in about two weeks. Gatlin alleges that Mahoney knew that the conditions in the City County Building were inhumane and dangerous.

At some point (Gatlin does not provide the exact date), Dr. Syed briefly met with her about her asthma complaints. However, Dr. Syed simply put a stethoscope to her chest and then walked away without asking her any questions.

OPINION

Plaintiff seeks to proceed against all defendants on constitutional claims related to how they handled her complaints about her asthma and the conditions of her confinement. To start, the court is dismissing defendants Walker, Triggs, and the "Dane County Jail Staff Responsible." An individual cannot be sued for damages under the Constitution unless he or she was "personally involved" in the violation. *Gill v. City of Milwaukee*, 850 F.3d 335, 344 (7th Cir. 2017). Since plaintiff has not alleged that Walker or Triggs were involved in any of the events comprising her claims, they will be dismissed. Additionally, while plaintiff has alleged that jail staff members were aware of her asthma and conditions of confinement, she may not proceed against a group of defendants or a department within the jail. *See Smith v. Knox Cty. Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012) (a "department in a prison cannot be sued because it cannot accept service of the complaint"). Rather, if plaintiff wishes to proceed against any additional staff members, she may seek to amend her complaint and identify each individual staff member by either their names (if she knows them) or by identifying them as Doe defendants and providing specific allegations about what each individual staff member did that she believes violated her rights.

As for the plaintiff's claims against Mahoney and Dr. Syed, the starting point is the applicable legal standard for plaintiff's claims. It is reasonable to infer, at least at this stage, that plaintiff may be a pretrial detainee and not a convicted prisoner, so the court will infer that her claims are governed by the due process clause of the Fourteenth Amendment. *Smith v. Dart*, 803 F.3d 304, 309–10 (7th Cir. 2015). The Court of Appeals for the Seventh Circuit has concluded that medical care and conditions of confinement claims

brought by pretrial detainees are governed by the due process clause of the Fourteenth Amendment, under the standard set forth by the United States Supreme Court in *Kingsley v. Hendrickson,* 576 U.S. 389 (2015). *See Hardeman v. Curren*, 933 F.3d 816, 821-22 (7th Cir. 2019); *Miranda v. Cty. of Lake*, 900 F.3d 335, 353 (7th Cir. 2018). Therefore, the failure to provide adequate conditions of confinement violates the due process clause if: (1) the defendants acted with purposeful, knowing, or reckless disregard of the consequences of their actions; and (2) the defendants' conduct was objectively unreasonable. *Miranda*, 900 F.3d at 353. While it is not enough to show negligence, the plaintiff is not required to prove the defendant's subjective awareness that the conduct was unreasonable. *Id.*

Starting with plaintiff's claims related to her asthma, the court begins with Dr. Syed. Plaintiff's description of Dr. Syed's examination -- that it did not include any discussion of her symptoms or assessment beyond listening to her breathing and/or heart -- permits a reasonable inference that his response was objectively unreasonable. Therefore, the court will allow her to proceed on Fourteenth Amendment medical care claims against Dr. Syed.

As her complaint currently stands, however, plaintiff may not proceed against any other defendant, since her complaint does not include allegations suggesting that any other named defendant was involved in responding to her need for medical attention related to her asthma.[2] With respect to Mahoney in particular, plaintiff may not proceed against him because there is no indication that he knew about her requests for her emergency

[2] The one exception may be the unknown deputy who denied her request for an inhaler. But to proceed against him, plaintiff would need to name him as a John Doe defendant and then pursue discovery to identify him.

inhaler, and plaintiff may not proceed against him solely by virtue of his role as sheriff. *Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000) ("[Section] 1983 does not allow actions against individuals merely for their supervisory role of others."). However, if plaintiff amends her complaint to include allegations of how any Doe defendant (or possibly Triggs or Walker) responded to her requests for medical attention, the court would be inclined to grant her leave to proceed against additional defendants, since it appears that her asthma went untreated for over two months.

As for the conditions of her confinement, plaintiff complaints about the humidity and lack of ventilation, lack of recreation time, lead in the water and worms. Starting with her allegations about lead in the water, while plaintiff has included very few allegations about this condition, her alleged exposure to lead in the drinking water appears sufficient to permit an inference that she was subjected to conditions that create a serious risk of injury, at least under the generous standard to which *pro se* litigants are entitled at the screening stage. Exposure to lead in drinking water can cause significant health issues, and indeed.

It is reasonable to infer that Mahoney knows about the lead in the water. While not explicit, plaintiff's allegation that she was instructed to let the water run for two minutes before drinking it suggests that the jail has adopted a policy or practice related for inmates to follow related to drinking water. It follows that Mahoney's inaction and decision to continue to place inmates in a position to have to drink that water (despite the two-minute warning) permits a reasonable inference of an objectively unreasonable

response to the potential harm of lead exposure. However, plaintiff has not alleged facts implicating any other defendants, so she may proceed on this claim against Mahoney alone.

As plaintiff proceeds with this claim in particular, she should be aware that she faces an uphill battle. This court has already determined, in two different lawsuits, that Mahoney and Dane County, among others, were not liable for constitutional violations related to the presence of lead in the water at the jail because of significant remediation efforts taken at the jail starting in 2016, and because the plaintiffs made no showing that they suffered injury as a result of lead exposure. *Coleman v. Mahoney*, No. 18-cv-902-wmc, 2021 WL 3128856 (W.D. Wis. July 23, 2021); *Shields v. Mahoney*, No. 17-cv-267-wmc, 2020 WL 4431741(W.D. Wis. July 31, 2020). Absent a showing that plaintiff actually suffered an injury associated with elevated levels of led in the water *and* some evidence that Dane County Jail officials failed to take appropriate action to remediate the risk to plaintiff's health during plaintiff's confinement at the jail, it is highly unlikely that this claim will survive summary judgment.

Next, plaintiff's allegations about her lack of access to recreation are also sufficient to state a claim at this stage. Deprivations of outdoor recreation can support a constitutional claim, even under the Eighth Amendment, which is more deferential to state actors. *See, e.g.*, *Delaney v. DeTella*, 256 F.3d 679, 684 (7th Cir. 2001) (inmate denied yard access for six months suffered sufficient constitutional deprivation); *Pearson v. Ramos*, 237 F.3d 881, 884-85 (7th Cir. 2001) (denial of yard privileges for more than 90 days may be cognizable under the Eighth Amendment). Given that plaintiff alleges that she did not receive *any* opportunities for outdoor recreational activity for at least 72 days, and it is

reasonable to infer that this was pursuant to a jail policy, she will be allowed to proceed on this claim against Mahoney, also under the Fourteenth Amendment.

However, plaintiff's allegations about the humidity, smell and worms do not support a constitutional claim as currently pled. Indeed, plaintiff has not provided any details about just how hot it was, or for how long, nor has she provided details about how pervasive the insects were or the extent of the smell. If, for example, she saw a few bugs in her cell every day, that would not give rise to a reasonable inference that she was subjected to objectively unreasonable conditions of confinement. *Compare Smith v. Dart*, 803 F.3d 304, 312-13 (7th Cir. 2015) ("[T]he mere presence of a laundry list of pests, without more, is not sufficient to state a constitutional claim.") *and Sain v. Wood*, 512 F.3d 886 (7th Cir. 2008) (while unpleasant, allegation of cockroach infestation spanning six years, including being bitten twice, did not constitute a constitutional violation) *with Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir. 1996) (prisoner stated claim under the Eighth Amendment by alleging that "cockroaches were everywhere, crawling on his body (along with mice) and constantly awakening him, and causing the environment to be unsanitary") (internal quotations omitted). While plaintiff may seek leave to amend her complaint to provide additional details about the severity of the humidity, smell and worms, at this time the court will not grant her leave to proceed on a Fourteenth Amendment claim related to these conditions.

ORDER

IT IS ORDERED that:

1. Plaintiff Jamila Gatlin is GRANTED leave to proceed on:

    a. Fourteenth Amendment medical care claims against defendant Dr. Syed.

    b. Fourteenth Amendment conditions of confinement claims related to lead in the water and lack of recreation against defendant Mahoney.

2. Plaintiff is DENIED leave to proceed on any other claim, and Walker, Triggs, and the "Dane County Jail Staff" are DISMISSED. Walker and Triggs are dismissed without prejudice to plaintiff's ability to amend her complaint to include allegations implicating these defendants.

3. The clerk's office will prepare summons, and the U.S. Marshal Service shall effect service upon defendants.

4. For the time being, plaintiff must send defendants a copy of every paper or document she files with the court. Once plaintiff has learned what lawyer will be representing defendants, she 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 she has sent a copy to defendants or to the defendants' attorney.

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

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

Entered this 5th day of October, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge