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

DESHAWN STATEN,

Plaintiff,

v.

STEPHEN A. SEHNEIDER,
ELIZABETH J. KAEDER-SEHNEIDER,
THOMAS T. TAYLOR,
SCOTT B. BROADBENT,
MICHAEL L. ROTH JR.
PIERRE GIAN MAZANETT,
MATTHEW O. MUTIVA,
KYLE. J. JORGENSON,
DR. STACEY L. HOEM,
MICHAEL COCKROFT,
JORDAN W. DUVE, and
CATHERINE L. BROADBENT,

Defendants.

OPINION AND ORDER

20-cv-227-wmc

Pro se plaintiff Deshaun Staten, who is currently incarcerated at Green Bay Correctional Institution, filed this lawsuit under 42 U.S.C. § 1983 against twelve defendants, all of whom were working at the Wisconsin Secure Program Facility ("WSPF") while Staten was previously was incarcerated there. Staten claims that defendants violated his constitutional and state law rights, as well as the Americans with Disabilities Act and the Rehabilitation Act, in failing to respond to his threats of self-harm and mental health needs. Previously the court dismissed Staten's complaint without prejudice because his allegations were not sufficiently detailed to support a constitutional claim against any defendant, while giving him the opportunity to file an amended complaint correcting those deficiencies. (Order 3/15/21 (dkt. #14).) Staten's proposed amended complaint is ready for screening under 28 U.S.C. § 1915A, and for the reasons that follow, the court will grant

Staten leave to proceed against one defendant, Dr. Stacey Hoem, on an Eighth Amendment deliberate indifference and Wisconsin negligence claim.

ALLEGATIONS OF FACT[1]

Plaintiff Deshawn Staten was incarcerated at WSPF in 2019. Employed at WSPF at that time were defendants: Sergeant Scott Broadbent; Sergeant Stephen Sehneider; Correctional Officer Elizabeth Kaeder-Sehneider; Lieutenant Thomas Taylor; Correctional Officer Michael Roth Jr.; Correctional Officer Pierre Gian Mazanett; Correctional Officer Matthew Mutiva; Correctional Officer Kyle Jorgenson; psychologist Dr. Stacey Hoem; Correctional Officer Michael Cockroft; Correctional Officer Jordan Duve; and law librarian Catherine Broadbent.

Staten has a history of mental and emotional distress, which manifested in several suicide attempts during his incarceration at WSPF. In particular, on September 20, 2019, Staten was placed on clinical observation status because he was threatening to kill himself. While in an observation cell, Staten further started cutting his wrist with a pen insert that security staff had failed to remove from the floor of the cell. Apparently before cutting himself, Staten told defendant Jorgenson of his intent to do so, to which Jorgenson allegedly responded, "go right ahead," "I don't care if you die or not," and walked away. However, Staten also alleges that Jorgenson informed Sergeant Broadbent that Staten was harming himself, and a few seconds later Broadbent came to Staten's cell, carrying a "gas can," which is an incapacitating agent.

[1] In addressing any *pro se* litigant's complaint, the court must read the allegations generously, drawing all reasonable inferences and resolving ambiguities in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

Broadbent then allegedly told Staten that he had been "wanting to use" the incapacitating spray on him, although Staten does not allege that Broadbent actually sprayed him, entered the cell or took any further action. Instead, Staten alleges that defendant Taylor arrived in the unit range as the lieutenant in charge, and asked Staten if he would come out of his cell. After Staten responded that he was trying to kill himself, Lieutenant Taylor also allegedly said something to the effect, "good for me I get to use the gas." Again, however, Staten does not allege Taylor sprayed him with an incapacitating agent or threatened to harm him; rather, it appears Taylor also walked away.

A half hour later, Taylor allegedly returned to Staten's cell with a cell extraction team, directing Staten to come out of his cell. When Staten complied, he was then escorted to a holding cell for a strip search. No contraband was found on Staten, and he was placed in a new cell, naked and without any property. Upset, Staten next showed defendant Cockroft a piece of a pen insert he still possessed, telling him he was about to cut again. Apparently, Lieutenant Taylor was present at that time as well, then walked away from the cell and returned with an incapacitating agent. However, when Taylor asked Staten if he was going to keep self-harming, and he responded in the affirmative, Taylor just walked away again. After that, Staten alleges that he was left in the new cell, which was "cooled," with no clothes and no ability to wash his hands for over 24 hours.

At some point, Staten alleges that he visited a nurse for the cuts on his left arm, but he does not detail whether he continued harming himself, whether he was bleeding, when he saw the nurse, or the treatment the nurse provided. Regardless, Staten spoke with defendant Sehneider the next day, who told him that Dr. Hoem directed he not be provided anything (presumably including clothing) until he stopped self-harming. Instead,

this allegedly caused Staten to start harming himself again with the pen insert, to which Officer Sehneider responded that he did not want to use the gas on him but would go ask Dr. Hoem if they could place him in a restraint chair. When Officer Sehneider left, defendant Kaeder-Sehneider came to Staten's cell, saw him cutting himself and told him to stop because they would not do anything for him and she did not care if he killed himself. Staten does not allege whether he continued to harm himself or the extent of any harm.

Multiple hours then passed, after which defendants Mazanett and Jorgenson brought dinner trays to Staten's unit range. However, Jorgenson told Staten that he wanted to spray him with the gas instead, and directed Mazanett to open Staten's food tray trap door. Although Mazanett was apparently hesitant to do so, a few minutes later, with *Staten* holding his trap door, defendants Taylor, Roth, Sehneider and Duve approached his cell with the incapacitating agent and an electric shield. When Staten asked why they were violating his rights, Lieutenant Taylor responded that Staten no longer had rights. Taylor also allegedly told Staten that they would not be placing him in restraints at Dr. Hoem's request.

According to Staten, Dr. Hoem continued to take no action to stop him from self-harming. Staten further alleges that WSPF librarian Catherine Broadbent subsequently prevented him from obtaining legal materials in retaliation for stating that he was going to file an inmate complaint related to the incidents that had occurred in late September 2019. Staten also alleges that he subsequently filed an inmate complaint against Broadbent for refusing to provide him needed materials, which was affirmed.

OPINION

Staten seeks to proceed against defendants on claims for violation of the First Amendment, Eighth Amendment, Americans with Disabilities/Rehabilitation Act, and state law. As an initial matter, however, plaintiff may not proceed against defendant Mutiva on any of these claims for lack of personal involvement. Indeed, to demonstrate liability under § 1983, a plaintiff must allege sufficient facts showing that an individual personally caused or participated in a constitutional deprivation. *See Minix v. Canarecci*, 597 F.3d 824, 833-34 (7th Cir. 2010) ("individual liability under § 1983 requires personal involvement in the alleged constitutional violation") (citation omitted). Since plaintiff has not alleged that Correctional Officer Mutiva was involved in any of the events that occurred in September 2019, he is not subject to suit under § 1983. Moreover, because the court is dismissing the only federal claim against Mutiva, the court further declines to exercise supplemental jurisdiction over any claim plaintiff may or may not have against him under state law. *See Williams v. Rodriguez*, 509 F.3d 392, 404 (7th Cir. 2007) (affirming dismissal of plaintiff's state law claims for lack of jurisdiction after parallel federal claims had been dismissed). Accordingly, Mutiva will be dismissed.

As for the remaining defendants, the court will address plaintiff's claims by category.

I. First Amendment

Plaintiff seeks to proceed against all defendants on retaliation claims under the First Amendment. However, to state a claim for retaliation under § 1983, a plaintiff must allege that: (1) he engaged in activity protected by the U.S. Constitution; (2) the defendant subjected the plaintiff to adverse treatment because of the plaintiff's constitutionally

protected activity; and (3) the treatment was sufficiently adverse to deter a person of "ordinary firmness" from engaging in the protected activity in the future. *Gomez v. Randle*, 680 F.3d 859, 866-67 (7th Cir. 2012); *Bridges v. Gilbert*, 557 F.3d 541, 555-56 (7th Cir. 2009). Although plaintiff claims that all of the defendants' actions were taken in retaliation, plaintiff does not identify the protected speech that formed the basis for the alleged adverse treatment, except with respect to defendant Catherine Broadbent. Therefore, except for defendant Broadbent, plaintiff's retaliation claims against all defendants fail at this first element.

Even plaintiff's claim against Broadbent fails at the second element. Specifically, plaintiff maintains that law librarian Broadbent refused to provide him access to legal materials in retaliation for threatening to file an inmate complaint about the September 2019 events surrounding his self-harm with the pen insert. Construed generously, the court will accept that plaintiff stated an intent to file a grievance, which may be protected conduct. *See Pearson v. Welborn*, 471 F.3d 732, 741 (7th Cir. 2006) (recognizing that an oral grievance is protected speech). However, plaintiff does not allege how, if at all, he was adversely impacted by Broadbent's alleged refusal to provide him legal materials. Rather, all plaintiff alleges is that he was unable to obtain certain materials. Given that he also alleges his inmate complaint against *Broadbent* was affirmed, however, his inability to access those materials appears to have been short-lived. As such, a trier of fact cannot reasonably infer that Broadbent's initial, alleged refusal to provide certain unidentified materials was sufficiently adverse to deter a person of ordinary firmness from threatening to file a grievance again in the future. Accordingly, the court will not grant plaintiff leave to proceed against Broadbent or any other defendant on a First Amendment retaliation claim.

II. Eighth Amendment

As in his original complaint, plaintiff also seeks to pursue four types of claims under the Eighth Amendment's prohibition on cruel and unusual punishment. *First,* plaintiff appears to challenge the conditions of his confinement for the 24-hour period of time when he was being held naked in the observation status cell after attempting self-harm, apparently without running water. Certainly, the Eighth Amendment imposes a duty on prison officials to provide "humane conditions of confinement" and to insure that "reasonable measures" are taken to guarantee inmate safety and prevent harm. *Farmer v. Brennan*, 511 U.S. 825, 834-35 (1994). To state a claim under the Eighth Amendment challenging conditions of confinement, however, a plaintiff must allege that: (1) the conditions of confinement were objectively serious, such that they deprive inmates of the minimal civilized measure of life's necessities; and (2) the defendant knew about, but failed to take reasonable measures to prevent this potential harm. *Henderson v. Sheahan*, 196 F.3d 839, 845 (7th Cir. 1999) (citing *Farmer*, 511 U.S. at 834).

Moreover, "[a] lack of heat, clothing, or sanitation can violate the Eighth Amendment." *Gillis v. Litscher*, 468 F.3d 488, 493 (7th Cir. 2006) (citations omitted). However, like his original complaint, plaintiff's allegations in his amended complaint do *not* support an inference that he was subjected to unreasonably cold conditions for an unconscionable period. Rather, plaintiff alleges that he was naked in a "cooled" cell for over 24 hours without running water, but does not challenge or even estimate the temperature he was subjected to, (2) allege that he was left without food or drinking water, or (3) suggest that he suffered anything more serious than discomfort during this 24-hour

period. *See Dixon v. Godinez*, 114 F.3d 640, 644 (7th Cir. 1997) (citing several objective factors relevant to whether low temperatures meet the objective element: "the severity of the cold; its duration; whether the prisoner has alternative means to protect himself from the cold; the adequacy of such alternatives; [and] whether he must endure other uncomfortable conditions as well as cold"). Although the combination of multiple, adverse conditions of confinement may satisfy the objective requirement "when the deprivations have a mutually enforcing effect which produces the deprivation of a single, identifiable human need," *Gillis*, 468 F.3d at 493, plaintiff does not allege that he was deprived of any of life's necessities during this relatively short period of time, much less that he complained to any of the defendants about these conditions and they responded with deliberate indifference. Accordingly, plaintiff's allegations of a "cool" cell and no running water do not support a conditions of confinement claim under the Eighth Amendment.

Second, an inmate may state a claim under the Eighth Amendment by alleging facts that would support a reasonable inference that a defendant acted with "deliberate indifference" to a "substantial risk of serious harm" to his health or safety. *Id.* at 836. Moreover, significant self-harm constitutes "serious harm." *See Minix*, 597 F.3d at 831. Thus, deliberate indifference to a risk of self-harm is present when an official is subjectively "aware of the significant likelihood that an inmate may imminently" harm himself, yet "fail[s] to take reasonable steps to prevent the inmate from performing the act." *Pittman ex rel. Hamilton v. County of Madison, Ill.*, 746 F.3d 766, 775-76 (7th Cir. 2014) (citations omitted); *see also Rice ex rel. Rice v. Correctional Medical Services*, 675 F.3d 650, 665 (7th Cir. 2012) ("[P]rison officials have an obligation to intervene when they know a prisoner suffers from self-destructive tendencies.").

In its original screening order, the court found that plaintiff's allegations did not support a reasonable inference that his use of the pen insert would cause him physical harm sufficient to support an Eighth Amendment claim. (3/15/21 Order (dkt. #14) 7-8 (quoting *Szopinksi v. Koontz*, 832 F. App'x 449, 451 (7th Cir. 2020) (quoting *Lord v. Beahm*, 952 F.3d 902 (7th Cir. 2020)). In particular, the court explained:

> Although plaintiff alleges that he told numerous defendants that he wanted to kill himself, and, worse, that he was cutting himself repeatedly with a pen insert, plaintiff has not alleged any details about the extent of the harm he inflicted upon himself. Curiously, plaintiff has not alleged that he was bleeding or even in pain; nor does he allege that he sought medical attention for the cuts he gave himself. Given that plaintiff alleges that he was able to *repeatedly* harm himself with the pen insert over what appears to be several hours, and then was able to recommence it again, it strains credulity to infer that plaintiff's injuries were anything beyond minor scratches that caused him minimal discomfort.

(*Id.* at 8.)

However, in his amended complaint, plaintiff adds little to address these deficiencies. Indeed, the only *new* allegation plaintiff includes with respect to his injuries is that he saw a nurse about his cut, which *might* support an inference that he injured himself. Yet plaintiff still does not allege (1) the extent of his injuries (or even whether he was bleeding); (2) when he actually saw a nurse; or (3) the nature of the medical care he required or received. These glaring, continued omissions obviously do not cure the court's express concerns with plaintiff's self-harm allegations, much less permit a reasonable inference of an injury approaching a constitutional dimension.

Moreover, the court previously noted that plaintiff's allegations about defendants' responses to his self-harming between September 20 and 21 of 2019 may have been

insensitive, but did not appear to support a reasonable inference of conscious disregard of a risk of substantial harm. (*See id.* at 8-9.) To the contrary, plaintiff's allegations in his amended complaint about Jorgenson, Broadbent, Taylor, Cockroft, Sehneider, Kaeder-Sehneider, Mazanett, Roth and Duve remain largely unchanged from his original complaint. In short, plaintiff has failed to allege that any of these defendants actually *ignored* his complaints of self-harm, nor has he alleged facts suggesting that any of them witnessed him engaging in self-harm so severe that their failure to intervene placed him at substantial risk of serious bodily harm. Accordingly, the court will not grant plaintiff leave to proceed on an Eighth Amendment claim related to his ability to harm himself with a pen insert.

Third, the Eighth Amendment recognizes a prisoner's right to receive adequate medical care, *Estelle v. Gamble*, 429 U.S. 97 (1976), which includes a right to appropriate mental health treatment. *Rice ex. Rel. Rice v. Correctional Medical Servs.*, 675 F.3d 650, 665 (7th Cir. 2012). To state a claim for deliberate indifference under the Eighth Amendment based on a denial of medical care claim, therefore, a plaintiff must allege facts giving rise to a reasonable inference that: (1) he had a serious medical need; (2) defendants knew that plaintiff needed medical treatment; and (3) defendants consciously failed to take reasonable measures to provide the necessary treatment. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). With the exception of Dr. Hoem, however, plaintiff's allegations do not support such an inference.

While plaintiff may have been intending to ask defendants to speak with a mental health professional when threatening self-harm and cutting himself, he does not allege as much. Plus, he affirmatively alleges that inmates on observation status *are* routinely

checked on by staff. Instead, defendants appear to have been responding directly to plaintiff's repeated threats of self-harm. Further, plaintiff affirmatively alleges that defendants Sehneider and Taylor relayed Dr. Hoem's directions on how they should handle his threats of self-harm, explicitly directing both *not* to restrain him. Thus, it would be unreasonable to infer that defendants' responses ignored a clear need for plaintiff to receive different or more specific attention for any mental health needs given that: (1) plaintiff had been placed on observation status; (2) defendants repeatedly warned him to stop self-harming or else they would need to use incapacitating agents; and (3) a mental health care professional had been alerted to the situation. If anything, these defendants were entitled to defer to Dr. Hoem's judgment, so long as they did not *ignore* plaintiff's need for care. *Berry v. Peterman*, 604 F.3d 435, 440 (7th Cir. 2010) (nonmedical prison officials "are entitled to defer to the judgment of health care professionals" so long as the inmate's complaints are not ignored). Since each of these defendants either reported plaintiff's self-harm to their supervisor or relayed plaintiff's behavior to Dr. Hoem, a trier of fact could not reasonably infer that these defendants responded to his mental health crisis with deliberate indifference.

This just leaves a question as to whether Dr. Hoem's actions suggest that she consciously disregarded plaintiff's need for mental health treatment. As currently pleaded, Dr. Hoem was repeatedly informed by correctional officers working in the observation unit that plaintiff was both threatening self-harm and engaging in self-harm. While the court has concluded that plaintiff's allegations do not permit a reasonable inference that he was threatening or committing *severe* self-harm, plaintiff alleges that Dr Hoem failed to take *any* action to address plaintiff's multi-day efforts to harm himself. Plaintiff may not have

alleged sufficient injury to suggest deliberate indifference to the threat of self-harm, but he has arguably alleged his suffering amounted to severe anguish due to Dr. Hoem's directive that no one stop plaintiff from harming himself. Certainly, fact-finding may reveal that Dr. Hoem exercised appropriate medical judgment in refusing to meet with or assess plaintiff herself, or that she actually did interact with plaintiff at some point when he was on observation status and made an informed decision that (1) plaintiff was not at severe risk of physical or mental harm, and (2) providing him any further attention would be counterproductive. Yet, at this stage, a trier of fact could reasonably infer that Dr. Hoem ignored plaintiff's clear call for help, which may support an inference of deliberate indifference to his need for mental health treatment. Therefore, the court will grant plaintiff leave to proceed against Dr. Hoem on an Eighth Amendment medical care deliberate indifference claim.

Fourth, the Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Because prison officials must sometimes use force to maintain order, the central inquiry for a court faced with an *excessive* force claim is whether it "was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992). Here, plaintiff only alleges being threatened with the use of incapacitating agents by multiple officers, *not* that the spray was actually administered, nor that defendants otherwise used force against him that would support inferring a malicious intent to harm plaintiff rather than an effort to curb his self-harm. Accordingly, plaintiff may not proceed an Eighth Amendment excessive force claim in this lawsuit.

III. State Law Claims

Plaintiff also seeks to proceed against defendants on state law claims of negligence and for defendants' violation of prison policies. *See* 28 U.S.C. § 1367(a); *Wisconsin v. Ho-Chunk Nation*, 512 F.3d 921, 936 (7th Cir. 2008). Because the court is only allowing plaintiff to proceed on a federal claim against Dr. Hoem, the court declines to exercise supplemental jurisdiction over plaintiff's proposed state claims against any other defendant. *See Williams*, 509 F.3d at 404.

As for Dr. Hoem, the same facts supporting plaintiff's Eighth Amendment claim underpin his medical negligence claim, so the court will exercise supplemental jurisdiction over that claim. 28 U.S.C. § 1367(a) ("[D]istrict courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."). Under Wisconsin law, the elements of a cause of action in negligence are: (1) a duty of care or a voluntary assumption of a duty on the part of the defendant; (2) a breach of the duty, which involves a failure to exercise ordinary care in making a representation or in ascertaining the facts; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 307 (1987). At least for screening purposes, plaintiff's allegations outlined above support a reasonable inference that Dr. Hoem breached her duty of care in failing to check on plaintiff personally, and that failure caused him continued mental anguish, which is sufficient to support a negligence claim. Accordingly, the court will grant plaintiff leave to proceed on a state law malpractice claim

against Dr. Hoem.

IV. ADA and Rehabilitation Act

Finally, although the court previously explained to plaintiff that his amended complaint should omit any unrelated ADA/Rehabilitation Act claim, he persists in pursuing such a claim. As previously explained, to establish a violation of Title II of the ADA, a plaintiff "must prove that he is a 'qualified individual with a disability,' that he was denied 'the benefits of the services, programs, or activities of a public entity' or otherwise subjected to discrimination by such an entity, and that the denial or discrimination was 'by reason of' his disability." *Wagoner v. Lemmon*, 778 F.3d 586, 592 (7th Cir. 2015) (*citing Love v. Westville Corr. Ctr.*, 103 F.3d 558, 560 (7th Cir. 1996) (citing 42 U.S.C. § 12132)). The Rehabilitation Act is substantially identical, except that a claim under § 504 of that Act has four elements: (1) an individual with a disability; (2) who was otherwise qualified to participate; (3) but who was denied access solely by reason of disability; (4) in a program or activity receiving federal financial assistance. *See Jaros v. Illinois Dep't of Corr.*, 684 F.3d 667, 671-72 (7th Cir. 2012).

Again, while the court accepts that plaintiff's mental illnesses render him disabled as defined by the ADA and Rehabilitation Act, the nature of his allegations do not satisfy either the second or third elements of a prima facie case. More specifically, while WSPF is considered a "public entity," plaintiff does not claim to be excluded from any service, program, or activity offered to other prisoners *because* of his mental illness. Instead, he simply claims that defendants denied him appropriate mental health care. Since plaintiff has not alleged that he has been denied services, programs or activities because of his

disability, plaintiff may not proceed on a claim under either the ADA or Rehabilitation Act.

ORDER

IT IS ORDERED that:

1. Plaintiff Deshaun Staten is GRANTED leave to proceed against defendant Dr. Stacey Hoem on Eighth Amendment medical care deliberate indifference and Wisconsin negligence claims.

2. Plaintiff is DENIED leave to proceed on any other claim, and defendants Sehneider, Kaeder-Sehneider, Taylor, Scott Broadbent, Roth, Mazanett, Mutiva, Jorgenson, Cockroft, Duve and Catherine Broadbent are DISMISSED.

3. Pursuant to 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 the defendant. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to the plaintiff's complaint if it accepts service for the defendant.

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

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

Entered this 15th day of December, 2021.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge