IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIAM CLIFTON LEWIS,

Plaintiff,

v.

MICHAEL SULLIVAN, Secretary,
Wisconsin Department of Corrections,

Defendant.

OPINION AND ORDER

98-C-0789-C

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Petitioner was denied leave to proceed in forma pauperis on December 17, 1998. I held that petitioner was barred from proceeding under 28 U.S.C. § 1915(g), colloquially known as the "three strikes" provision of the Prisoner Litigation Reform Act. Section 1915(g) states:

> In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

On at least three prior occasions, petitioner had been denied leave to proceed in forma pauperis in this district in lawsuits deemed to be legally frivolous. See Lewis v. Goodrich, 88-C-

1101, decided December 28, 1988; Lewis v. Eisenga, 91-C-1048-C, decided December 20, 1991; and Lewis v. Coleman, 93-C-491-C, decided August 3, 1993. Moreover, petitioner's proposed complaint did not allege facts from which an inference could be drawn that he was under imminent danger of serious physical injury. The gravamen of the proposed complaint was that petitioner was being denied treatment for post-traumatic stress disorder, in violation of his Eighth Amendment constitutional rights and his rights under the Americans with Disabilities Act. Therefore, I held that petitioner had to prepay the entire $150.00 filing fee if he wished to proceed with his complaint.

Petitioner then submitted a motion for reconsideration challenging the constitutionality of § 1915(g). Because I found that there was no evidence that petitioner had exhausted his available administrative remedies as required under 42 U.S.C. § 1997e(a), I concluded that it was premature to decide whether § 1915(g) impermissibly infringed upon petitioner's right of reasonable access to the courts. I denied his petition without prejudice to its being re-opened after petitioner submitted documentation establishing that he had exhausted available administrative remedies according to the procedures of the Wisconsin inmate complaint review system detailed in Wis. Admin. Code § DOC 310.

Petitioner then submitted a motion to re-open his case. In his motion, petitioner stated that the inmate complaint review system "lack[ed] subject matter jurisdiction" over his

proposed complaint. Instead of utilizing that system, petitioner sought relief by writing to the director of health services for the Wisconsin Department of Corrections. I found that under 42 U.S.C. § 1997e(a), petitioner was not free to refuse to exhaust available administrative remedies according to the procedures of Wis. Admin. Code § DOC 310. I interpreted petitioner's contention that the inmate complaint review system "lack[ed] subject matter jurisdiction" over his complaint as an argument that utilizing that system would be futile because the administrative process cannot or will not provide treatment for him and money damages. I found that even if that were so, it would not matter; petitioner may not bring his suit in this court until he has exhausted the administrative remedies available to him by completing the procedures detailed in Wis. Admin. Code § DOC 310. See Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999) (prisoner must exhaust administrative remedies even if exhaustion would be futile and prisoner cannot obtain money damages through administrative process). Accordingly, petitioner's motion to re-open his lawsuit was denied.

Now before the court is petitioner's new motion to re-open his lawsuit. He contends that Wis. Admin. Code § DOC 310.08(4) allows him to exhaust his available administrative remedies by writing to the director of the bureau health services for the Wisconsin Department of Corrections. Section 310.08(4) provides that "Health care and psychiatric complaints shall be directed to the director of the bureau of health services or designee." Although petitioner's

confusion is understandable, § 310.08(4) does not exempt health care and psychiatric complaints from the requirements of the inmate complaint review system. Rather, it merely tells inmates to direct their complaints via the inmate complaint review system to the director of the bureau of health services. Only after petitioner has completed each step of the inmate complaint review system as described in Wis. Admin. Code § DOC 310 may this court consider his claim. As I explained in my first order dismissing this case for failure to exhaust available administrative remedies, 28 U.S.C. § 1997e(a) mandates that "no action shall be brought" by a prisoner under any federal law until the prisoner has exhausted all "administrative remedies as are available," Alexander v. Hawk, 159 F.3d 1321, 1323 (11th Cir. 1998) and courts have no discretion to waive this requirement. See id. at 1325; see also Rumbles v. Hill, 1999 WL 459461 (9th Cir. June 30, 1999); Garrett v. Hawk, 127 F.3d 1263, 1265 (10th Cir. 1997). Accordingly, petitioner's motion to re-open his lawsuit will be denied.

ORDER

IT IS ORDERED that the motion of petitioner William Clifton Lewis to re-open this lawsuit is DENIED without prejudice to its being re-opened after petitioner submits documentation that he has exhausted available administrative relief according to the procedures of Wis. Admin Code § DOC 310, as required by 28 U.S.C. § 1997e(a).

Entered this 7th day of August, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge