IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JERRY MEANS,

Plaintiff, ORDER

v. 02-C-0695-C

PETER HUIBREGTSE, JON LITSCHER,
DR. C. CULLEN, Psychologist,
DR. TWILA HAGAN, Head Psychologist,
CAPTAIN BLACKBURN, JANE DOE, Staff,
and CORR. OFFICER DIVALL,

Defendants.

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This is a proposed civil action for monetary and declaratory relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Jerry Means, an inmate at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, alleges that he was denied adequate psychiatric services at the prison. Although plaintiff has paid the full $150 filing fee, his complaint must still be screened pursuant to 28 U.S.C. § 1915A.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, the prisoner's

complaint must be dismissed if, even under a liberal construction, it is legally frivolous, malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief. See 42 U.S.C. § 1915e.

Because at this early stage of the proceedings plaintiff has stated an Eighth Amendment claim against defendants Cullen and Hagan for inadequate mental health care, he will be granted leave to proceed against these two individuals only. Because he has not stated a claim against the remaining defendants, they will be dismissed. In addition, plaintiff's motion for appointment of counsel will be denied without prejudice.

In his complaint and attachments, plaintiff makes the following material allegations of fact.

ALLEGATIONS OF FACT

Plaintiff Jerry Means is an inmate at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. All defendants are employees at the prison. Defendant Peter Huibregtse is the deputy warden, defendant Dr. C. Cullen is a psychologist, defendant Dr. Twila Hagen is the head psychologist, defendant Blackburn is a captain, defendant Jane Doe is a staff member and defendant Divall is a correctional officer.

On March 18, 2002, plaintiff began complaining about anxiety and hearing voices. Between April 11 and May 19, 2002, plaintiff wrote several psychologists complaining about

his bipolar disorder. His letters were ignored. (It is unclear to whom plaintiff complained.)

On June 17, 2002, plaintiff was set on fire. Jane Doe gave plaintiff matches and a cigarette. Defendant Divall wrote the conduct report. Defendant Blackburn gave plaintiff 360 days of program segregation. Defendant Hagen giggled at plaintiff's problems. Defendant Cullen was unprofessional when plaintiff ate feces in front of her. Defendant Litscher ignored and dismissed plaintiff's complaints.

DISCUSSION

I understand plaintiff to allege that he received inadequate mental health care while at the Wisconsin Secure Program Facility. The Eighth Amendment requires the government "'to provide medical care for those whom it is punishing by incarceration.'" Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state a claim of cruel and unusual punishment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle, 429 U.S. at 106. Therefore, plaintiff must allege facts sufficient to satisfy the court he had a serious medical need and that defendant was deliberately indifferent to this need. Estelle, 429 U.S. at 104; see also Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). Attempting to define "serious medical needs," the Court of Appeals for the Seventh Circuit has held that they encompass not only conditions that are life-threatening or that carry risks

of permanent, serious impairment if left untreated, but also those in which the deliberately indifferent withholding of medical care results in needless pain and suffering. Gutierrez, 111 F.3d at 1371. Plaintiff has alleged that he suffers from a variety of mental disorders including anxiety and bipolar disorder. These allegations are sufficient to suggest that plaintiff has serious medical needs.

To be deliberately indifferent, an "official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer, 511 U. S. at 837. It is not enough that the official "should have known" of the risk. Rather, the official must know there is a risk and consciously disregard it. Higgins v. Correctional Medical Services of Illinois, 178 F.3d 508, 511 (7th Cir. 1999). Although deliberate indifference may be found where "the medical treatment is 'so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition,'" Snipes, 95 F.3d at 592 (citations omitted), inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient grounds for invoking the Eighth Amendment. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996). "[D]ifferences in opinion between the patient and the doctor [regarding medical treatment] never give rise to a constitutional claim." Higgins v. Correctional Medical Services of Illinois, Inc., 8 F. Supp 2d. 821, 830 (N.D. Ill. 1998).

Plaintiff alleges that he began complaining about hearing voices and anxiety on March

18, 2002, and that between April 11 and May 19, 2002, he wrote to several unspecified psychologists complaining about his bipolar condition and that these complaints were ignored. At this early stage of the proceedings, these allegations are sufficient to state a claim for deliberate indifference. Liberally construing plaintiff's complaint, I infer that he complained to defendants Cullen and Hagen, the two psychologists named in the complaint. Accordingly, plaintiff will be granted leave to proceed against these two defendants on his claim of inadequate mental health care. However, because plaintiff has failed to state a claim on which relief can be granted against the remaining defendants, these individuals will be dismissed.

In addition, plaintiff has filed a motion for appointment of counsel. Although plaintiff has shown that he asked three lawyers to represent him who turned him down, see Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992), his motion for appointment of counsel will be denied as premature. At this early stage of the proceedings, it is unclear whether plaintiff's case will be decided on the merits or, for instance, whether the case will be dismissed on a procedural issue, such as exhaustion of administrative remedies. Although plaintiff argues that this case is too complex for his legal knowledge, he has written a complaint that is clear and complete. I am confident that plaintiff can represent himself at least through the first stages of his lawsuit. Accordingly, plaintiff's motion for appointment of counsel will be denied without prejudice to plaintiff renewing his motion at a later date

if the case proceeds to a decision on the merits.

ORDER

IT IS ORDERED that

1. Plaintiff Jerry Means's request for leave to proceed in forma pauperis against defendants Dr. C. Cullen and Dr. Twila Hagan is GRANTED on his claim that these defendants ignored his mental health complaints (between March 18 and May 19, 2002) in violation of the Eighth Amendment;

2. Defendants Peter Huigbretse, Jon Litscher, Captain Blackburn, C.O. Divall and Jane Doe are dismissed; and

3. Plaintiff's motion for appointment of counsel is DENIED without prejudice.

Entered this 6th day of January, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge