IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

HARRISON FRANKLIN,

Plaintiff,

OPINION AND ORDER

v.

02-C-618-C

GARY R. McCAUGHTRY, GERALD BERGE, PAULINE BELGADO, SARGENT SIEDOSCHLAG, PETER HUIBREGTSE, LINDA HODDY-TRIPP, MS. BLACKBOURNE, JIM WEGNER, SARGENT LIND, CAPTAIN JOHN P. GRAHL, SARGENT DAN MEEHAN, CO II MIKE GLAMAN, and NURSE HOLLY MEIER,

Defendants.

- -

Plaintiff Harrison Franklin is an inmate at Waupun Correctional Institution and is currently proceeding on claims that various prison officials violated his constitutional rights to be free from excessive force, to gain access to the courts and to receive adequate exercise and medical care. With the exception of Sargent Lind, all the defendants have filed a motion to dismiss in full or in part. They assert that (1) plaintiff failed to exhaust his administrative remedies with respect to most of his claims that defendants Paulino Belgado, Gary

McCaughtry, Sargent Siedoschlag, Jim Wegner and Holly Meier failed to provide him with adequate treatment for his finger; (2) plaintiff did not fully exhaust his claims that defendants John Grahl, Dan Meehan and Mike Glaman used excessive force against him and denied him adequate medical treatment; (3) plaintiff failed to exhaust his administrative remedies on his claim that defendant Linda Hoddy-Tripp denied him eyeglasses; (4) plaintiff failed to exhaust his administrative remedies with respect to all of his claims against defendants Gerald Berge and Peter Huibregtse and fails to state a claim upon which relief may be granted against these defendants; (5) plaintiff cannot got forward on his claim that defendants Belgado, McCaughtry and Jim Wegner refused to give him pain medication because it is barred by claim preclusion; and (6) plaintiff cannot prevail on his assertion that that defendants Blackbourn and Hoddy-Tripp refused to allow him to consult with his attorney because his allegations fail to state a claim upon which relief may be granted.

Defendants' motions to dismiss will be granted in part and denied in part. I conclude that plaintiff has exhausted his administrative remedies with his respect to his claim that defendants Belgado, Wegner, Meier and McCaughtry ignored his requests for medical care before his finger was partially amputated. In addition, I conclude that plaintiff was not required to identify defendants Hoddy-Tripp, Berge and Huibregtse by name in his inmate complaints. Defendants' motion to dismiss will be granted in all other respects.

For the purpose of deciding this motion to dismiss, I accept as true the allegations in

plaintiff's complaint. In the order granting plaintiff leave to proceed, I did not set forth the facts surrounding plaintiff's claims of inadequate medical care for his finger because they were substantially the same as the allegations in plaintiff's complaint in Franklin v. McCaughtry, No. 00-C-157-C. Because these allegations are central to defendants' motion to dismiss, I have included the allegations below.

In addition, I have considered documentation of plaintiff's use of the inmate complaint review system. Because these are public records, a court may take judicial notice of the documents without converting the motion to dismiss into a motion for summary judgment. Menominee Indian Tribe of Wisconsin v. Thompson, 161 F.3d 449, 455 (7th Cir. 1998).

ALLEGATIONS OF FACT

I. MEDICAL CARE

Beginning in September 1996, plaintiff Harrison Franklin made requests at Waupun Correctional Institution for medical treatment of a sore on the tip of his right index finger. Defendants Paulino Belgado, Gary McCaughtry, Jim Wegner and Holly Meier were aware of these requests but ignored them. Plaintiff did not receive treatment for his finger, even after the sore became infected. In April 1997, defendant Meier told defendant that he would "get nothing" for his condition unless he paid $2.50, even though he had already paid $2.50.

In December 1997, he was given "some kind of cream." The cream did not cure the infection, relieve plaintiff's pain or stop his finger from bleeding. Plaintiff received no further treatment for his finger. As a result, his right index finger had to be partially amputated on June 10, 1999.

The day before plaintiff's surgery, he was informed that the doctor had directed him to shower with antibacterial soap. C.O. Campbell and Nurse M.J. told defendant Sargent Siedoschlag that the shower was necessary to avoid infection. However, defendant Siedoschlag refused to let plaintiff shower.

Following plaintiff's surgery on June 13, 1999, defendant Siedoschlag denied plaintiff the necessary materials to change the dressing on his hand. He was forced to wear a rubber glove instead. On June 17, 1999, defendant Belgado, a doctor at Waupun Correctional Institution, refused to see plaintiff, even though he was in a lot of pain. On June 28, 1999, defendant Belgado spoke with plaintiff. Belgado told plaintiff that the "doctors in Madison had no authority" and plaintiff would receive only the medications he believed plaintiff should have. Defendant Belgado squeezed the tip of plaintiff's finger, stating, "I'll show you what real pain is." On July 8, 1999, plaintiff complained of pain in his finger. Defendant John Grahl said that he would find medical help but he failed to do so. Even though plaintiff was in great pain, defendant Belgado refused to treat plaintiff on July 12, 1999, because plaintiff would not discuss a letter he had written to Beth Dithmann, the health services

director.

On July 22, 1999, plaintiff wrote to defendants Wegner and McCaughtry, asking them to address his complaints of inadequate medical treatment. On July 26, 1999, plaintiff spoke with a doctor at UW Hospital, who told plaintiff that his finger had cancer in it. In addition, the doctor said that his finger had to be amputated because of the lack of treatment. Another doctor from the hospital told plaintiff in September 1999 that he had squamous cell carcinoma and that defendant Belgado knew that plaintiff had cancer in his finger.

On September 21, 1999, plaintiff went to Kenosha, Wisconsin for three days for a post-conviction motion. Although defendants Belgado and Meier were aware of the dangers of stopping plaintiff's prescribed medication, they did not send any medication with plaintiff to Kenosha. As a result, plaintiff endured pain for three days.

In October 1999, plaintiff had a work assignment in the prison kitchen. He asked for a different assignment because he believed that the condition with his finger made him unable to work with extreme temperatures. Nurse M.J. and a rehab technician agreed that extreme temperatures would cause plaintiff pain. On October 22, 1999, defendant Belgado authorized plaintiff to be taken off kitchen duty.

II. ADMINISTRATIVE EXHAUSTION

Plaintiff filed inmate complaint number WCI-1999-49732 on June 29, 1999, with the inmate complaint examiner. He wrote that after his amputation, defendant Belgado provided him with Ibuprofen for his pain and refused to fill an order for prescription pain killers provided by doctors at the university hospital. The examiner concluded that plaintiff had received adequate care and recommended that the complaint be dismissed on its merits. The decision was affirmed by the reviewer, the corrections complaint examiner and the office of the secretary.

On July 7, 2000, plaintiff filed complaint number WCI-2000-19626. He wrote:

> On 6-23-00 I was handcuffed to the strip cage in H.S.C. while officer Mike Glamann, Sgt. Dan Mehan and Capt. Grahl performed a body cavity search on me in front of several officers. This procedure failed to conform to the regulations of DOC 306.16(1)(c). And none of the officers involved had the warden's permission as noted by 306.16(4). These officers also failed to maintain the dignity of the inmate as established by 306.16(7). Dismissing the conduct report #1160291 is not a sufficient remedy for all that I suffered at the officers' hands. This was done in an attempt to intimidate me and punish me for filing a civil suit against members of this administration as they were served notices the day before this attack transpired. I would like to know what is going to be done about this attack.

On October 2, 2000, plaintiff submitted an offender complaint to the inmate complaint examiner, in which he wrote:

> Repeatedly, I've tried to file this ICI at Waupun Correctional Institution. On 16 of June 99, I was ordered by the ICI to resolve this issue with "Beth Ditthman" on my own. Beth Ditthman refuses to answer any of my requests or my inquiries. But in Sept of 96 I arrived at Waupun Corr. Institution. Upon my arrival I complained of

> the infection on my right index finger. I've brought this problem to the attention of Dr. Belgado and other medical staff. Still I received absolutely no treatment for my finger. After extensive complaining and unbelievable pain, I was given some cream in Dec 97. This cream never cured my problem or gave me relief from my pain. Now a minor infection has turned into a full-blown amputation, due to "deliberate indifference and refusal of proper medical attention." I want to know why I was denied medical treatment for so long ? And what's going to be done about it? And why I.C.I. refused to [ac]cept my complaint?

In a decision dated October 9, 2000, the examine wrote: "This inmate is well past his 14 day calendar limit for filing a complaint. This complaint was accepted and investigated because of the serious medical issued raised." The examiner further wrote: "There is no evidence that this inmate was denied medical treatment for the complaint issue he raised in June of 1999. His treatment at that time was investigated as the result of that complaint and will not be further addressed at this time." The examiner recommended that the complaint be dismissed. The decision was affirmed without modification by a reviewer, a corrections complaint examiner and the office of the secretary.

On November 30, 2000, plaintiff filed inmate complaint number SMCI-2000-34342, in which he wrote that he was being denied eyeglasses that he needed. He did not identify who was responsible for taking his glasses. He claimed that without glasses he could not read and that he was experiencing headaches. The inmate complaint examiner recommended that the complaint be dismissed because defendant Hoddy-Tripp had concluded that plaintiff's glasses posed a security risk. The dismissal was affirmed by the reviewer, the corrections

complaint examiner and the office of the secretary.

Plaintiff filed offender complaint number SMCI-2001-3563 with the inmate complaint examiner on January 30, 2001. He wrote that defendant Meier refused to treat him on April 3, 1997. On the same day, he filed complaint number SMCI-2001-3565, in which he wrote that defendant Siedoschlag had refused to allow him to take a shower before his surgery in June 1999. The examiner rejected both complaints under Wis. Admin. Code § DOC 310.09(3) because they were filed more than 14 days after the event occurred. The corrections complaint examiner and the office of the secretary affirmed the dismissal.

III. PROCEEDINGS IN THIS COURT

On June 9, 2000, plaintiff filed a complaint in this court against Paulino Belagado, Beth Ditthman, Sargent Siedoschlag and Gary McCaughtry, alleging that they had failed to provide adequate medical care for his finger. Plaintiff later amended his complaint to include Jim Wegner as a defendant. In January 2001, I dismissed all of plaintiff's claims for failure to exhaust his administrative remedies, with the exception of his claim that Belgado, McCaughtry and Wegner gave him Ibruprofen instead of a prescription pain killer. See Franklin v. McCaughtry, No. 00-C-157-C (Order entered Jan. 26, 2001, dkt. #41). In June 2001, I granted the defendants' motion for summary judgment with respect to the remaining claim on the ground that no reasonable jury could have found that the defendants were

deliberately indifferent to plaintiff's health or safety. See id. (Order entered June 22, 2001, dkt. #65).

OPINION

I. EXHAUSTION OF ADMINISTRATIVE REMEDIES

A. Applicable Law

The Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), prohibits the bringing of any action "with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Section 1997(a)'s exhaustion requirement is mandatory and applies to all prisoners seeking redress for wrongs occurring in prison. Porter v. Nussle, 534 U.S. 516 (2002). The Court of Appeals for the Seventh Circuit has held that "a suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits." Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 535 (7th Cir. 1999); see also Massey v. Helman, 196 F.3d 727 (7th Cir. 1999). The potential effectiveness of an administrative response bears no relationship to the statutory requirement that prisoners first attempt to obtain relief through administrative procedures." Massey, 196 F.3d at 733.

Wis. Admin. Code § DOC 310.04 (April 1998) sets forth the requirements that

inmates must follow when filing a complaint. (Chapter DOC 310 was amended in November 2002. However, the previous version was still in effect at the times relevant to this action.) "Before an inmate may commence a civil action . . . the inmate shall file a complaint under §§ DOC 310.09 or 310.10, receive a decision on the complaint under § DOC 310. 12, have an adverse decision reviewed under § DOC 310.13, and be advised of the secretary's decision under § DOC 310.14." An inmate shall include only one issue in each complaint. Wis. Admin. Code § DOC 310.09(1). The inmate complaint examiner may reject a complaint as frivolous if it fails to allege sufficient facts upon which redress may be made. Wis. Admin. Code § DOC 310.11(4)(c).

To exhaust administrative remedies, a prisoner must observe the procedural requirements of the system. Pozo v. McCaughtry, 286 F.3d 1022, 1023 (7th Cir. 2002) ("unless the prisoner completes the administrative process by following the rules the state has established for that process, exhaustion has not occurred"). Any other approach would defeat the statutory objective of allowing the prison administration the opportunity to fix the problem, id. at 1024, and would remove the incentive that § 1997e provides for inmates to follow state procedure, id. at 1025.

B. Adequate Medical Care Claims

The first issue is whether plaintiff has exhausted his claims regarding the medical

treatment for his finger. As defendants point out, plaintiff is asserting numerous claims involving the treatment of his finger. I conclude that plaintiff has failed to exhaust his administrative remedies on all but two of these claims. First, defendants agree that plaintiff completed the inmate complaint review process with respect to his claim that defendant Belgado did not give him sufficient pain medication following the amputation of his finger. Second, I conclude that plaintiff exhausted his administrative remedies with respect to his claim that defendants Belgado, Wegner, Meier and McCaughtry ignored his requests for medical treatment until it was necessary to amputate his finger.

Plaintiff's October 2, 2000 offender complaint stated that he had "complained of the infection in [his] right index finger" since he arrived at Waupun Correctional Institution in 1996, but that no one treated it until the finger had to be amputated. Although the inmate complaint examiner noted that the complaint was past the time limit for filing a complaint, the examiner considered the complaint nevertheless, writing, "This complaint *was accepted* and investigated because of the serious medical issue raised." (Emphasis added.) Each reviewing authority affirmed the examiner's decision without modification. Under Wis. Admin. Code § DOC 310.09(3), an examiner may accept a late complaint for good cause. Thus, plaintiff successfully exhausted his administrative remedies with respect to this claim.

Plaintiff's remaining medical care claims involve allegations regarding the way defendants treated his condition *after* the decision to amputate was made. However, in the

October 2, 2000 complaint, he challenged the lack of treatment he received that *led to* the need to amputate his finger. He does not mention subsequent failures to treat his condition. According to the affidavit of John Ray, who is a custodian of the records in the office of the corrections complaint examiner, plaintiff did not file any inmate complaints that addressed these issues, except for the one questioning defendant Belgado's decision not to provide him with prescription pain medication. Plaintiff does not dispute Ray's averment.

Plaintiff did file two other complaints. One concerned defendant Siedoschlag's refusal to allow him to take an antibacterial shower. However, this complaint was rejected as untimely. Thus, under Pozo, 286 F.3d at 1023, plaintiff has not exhausted his remedies with respect to this claim. In addition, plaintiff filed an inmate complaint in which he wrote that defendant Meier refused to treat his finger in April 1997. This complaint was unnecessary because plaintiff had already exhausted his claim that defendant Meier refused to give him *any* treatment for his finger until December 1997. The refusal on April 1997 would necessarily be included in that claim.

In short, I conclude that the following claims must be dismissed for plaintiff's failure to exhaust his administrative remedies: (1) defendant Siedoschlag refused to allow him to take an antibacterial shower before his surgery and refused to allow him to change the dressing on his hand; (2) defendants Belgado, Grahl, Wegner, Meier and McCaughtry refused to provide plaintiff with medical care after his surgery; (3) defendant Belgado

squeezed plaintiff's finger while saying, "I'll show you what real pain is"; and (4) defendant Belgado temporarily refused to authorize that plaintiff be taken off kitchen duty.

B. Retaliation, Excessive Force and Denial of Medical Care

In an order dated January 28, 2003, I allowed plaintiff to proceed in forma pauperis on claims that defendants McCaughtry, Belgado and Siedoschlag directed defendants Grahl, Meehan and Glaman to retaliate against him for filing a lawsuit by handcuffing him to a door, performing a body cavity search on him, placing him in a freezing cell with no mattress, sheets or blankets, feeding him "seg loaves" and transferring him to the Wisconsin Secure Program Facility. In addition, I allowed plaintiff to proceed on claims that defendants Grahl, Meehan and Glaman used excessive force against him by banging his head against the door repeatedly when he did not consent to the search and also denied his right to medical care when they refused to seek medical treatment for him.

However, in the July 7, 2000 offender complaint, plaintiff alleged only that defendants retaliated against him by conducting a body cavity search on him. He did not allege that defendants banged his head against the door or denied him medical care. Although the latter two claims are related to the first, they are different claims involving different facts. Plaintiff did not give the Department of Corrections an opportunity to provide a remedy for these claims without a lawsuit. Perez v. Wisconsin Department of

Corrections, 182 F.3d 532, 537 (7th Cir. 1999) (two purposes of exhaustion requirement are "to narrow a dispute" and "avoid the need for litigation). Furthermore, plaintiff provided no notice to the examiner or to defendants that he was physically injured by defendants and then denied treatment for his injuries. Without such notice, I cannot conclude that plaintiff's inmate complaint was sufficient to administratively exhaust his remedies with respect to these claims. Strong v. David, 297 F.3d 646 (7th Cir. 2002) (when agency provides no standard regarding sufficiency of prisoner grievance, court should apply notice pleading standard under Fed. R. Civ. P. 8). Accordingly, I must dismiss plaintiff's claims of excessive force and denial of medical care for failing to exhaust his administrative remedies.

C. Eyeglasses

In the January 28 order, I allowed plaintiff to proceed on a claim that defendant Hoddy-Tripp had denied him his eyeglasses in violation of the Eighth Amendment. Defendants concede that plaintiff filed an inmate complaint regarding the deprivation of his eyeglasses and that he exhausted his appeals within the inmate complaint review system. Nevertheless, defendants contend that plaintiff had failed to administratively exhaust this claim because he failed to identify in his inmate complaint that defendant Hoddy-Tripp was the person responsible for the deprivation.

Defendants' argument is not persuasive. First, I note that plaintiff's complaint was

not rejected for lacking specificity. In fact, the complaint examiner knew exactly who the complaint was against as she identified defendant Hoddy-Tripp in the decision dismissing plaintiff's complaint. However, even if plaintiff's complaint had been rejected because plaintiff failed to identify defendant Hoddy-Tripp by name, this would not necessarily bar plaintiff's claim against her unless the regulations required it.

It is true that one court of appeals has suggested that an inmate's failure to name a defendant in an administrative grievance may make a claim vulnerable to dismissal for failure to exhaust as to that defendant. Curry v. Scott, 249 F.3d 493, 504-05 (6th Cir. 2001). In Strong, 297 F.3d at 647, the Court of Appeals for the Seventh Circuit noted this approach, but did not adopt it. Rather, the court held that the level of specificity required in a prison grievance is determined by what the administrative system requires. Defendants do not point to any regulations that require a particular amount of specificity in an inmate complaint. "When the administrative rulebook is silent, a grievance suffices if it alerts the prison to *the nature of the wrong* for which redress is sought." Id. at 650 (emphasis added). Plaintiff identified "the nature of the wrong": he was deprived of his glasses. He did not need to identify defendant Hoddy-Tripp by name. In this circuit,"when the substance of a pro se civil rights complaint indicates the existence of claims against individual officials not named in the caption," this is sufficient to state a claim. Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir. 1996). A court may not dismiss a pro se complaint

simply because it fails to identify the defendant by name. Id. Absent more specific requirements in the regulations, this is the standard I must apply to inmate complaints.

Furthermore, I note that if I were to adopt defendants' standard, this would mean that prisoners would have exactly 14 days from the time a constitutional violation occurred to learn the identities of the alleged malfeasants. If they would fail to do so, their claim could be forever lost. Unless a prison sets up a system in which inmates may make discovery-type requests before a lawsuit is filed *and* those requests are fulfilled before the time limit for filing an inmate complaint expired, a policy requiring officials to be named in the inmate complaint could be invalid if it prevented prisoners from obtaining relief. See Strong, 297 F.3d at 649 ("[N]o prison system may establish a requirement inconsistent with the federal policy underlying § 1983."). Thus, I conclude that plaintiff has exhausted his administrative remedies with respect to his claim that defendant Hoddy-Tripp denied him eyeglasses.

D. Claims against Berge and Huibregtse

I allowed plaintiff to proceed on several claims against defendants Berge and Huibregtse because he alleged that he had sent letters to them seeking aid with respect to each of his claims that arose at the Wisconsin Secure Program Facility but they had refused to intervene. Defendants argue that because plaintiff did not identify Berge and Huibregtse

in his inmate complaints, he has not exhausted his administrative remedies with respect to those defendants.

This argument fares no better with respect to defendants Berge and Huibregtse than it did with respect to defendant Hoddy-Tripp. Plaintiff is not required to identify everyone involved in the alleged constitutional violation so long as he identifies the conduct giving rise to the claim. Similarly, plaintiff is not required to file a new inmate complaint each time another official consents to the alleged violation.

Defendants also argue that "[d]irect correspondence cannot be a substitute for a proper adherence to the ICRS procedures." Dft.'s Br, dkt # 11, at 19. I agree with defendants that plaintiff did not exhaust his administrative remedies by writing letters to defendants Berge and Huibregtse. Rather, he exhausted his remedies by complaining about the underlying conduct through the inmate complaint review system. To the extent that defendants mean to argue that letters to prison officials cannot establish liability under 42 U.S.C. § 1983, the court of appeals has already considered this issue and decided it against defendants. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Vance v. Peters, 97 F.3d 987, 993 (7th Cir. 1996).

II. CLAIM PRECLUSION

One of plaintiff's claims regarding the lack of medical care for his finger is that

defendants Belgado, Wegner and McCaughtry refused to give him an adequate pain medication after his surgery. Defendants agree that plaintiff exhausted his administrative remedies on this claim. However, they contend that this claim is barred by the doctrine of claim preclusion. I agree.

Claim preclusion bars a subsequent suit if the claim upon which the suit is based arises from the "same incident, events, transaction, circumstances, or other factual nebula as a prior suit that had gone to final judgment." Okoro v. Bohman, 164 F.3d 1059, 1062 (7th Cir. 1999). The three requirements of claim preclusion under federal law are: (1) an identity of parties or their privies; (2) an identity of causes of action; and (3) a final judgment on the merits. Central States, Southeast and Southwest Areas Pension Fund v. Hunt Truck Lines, Inc., 296 F.3d 624, 628 (7th Cir. 2002). These requirements have been met in this case.

In Franklin v. McCaughtry, Case No. 00-C-157-C, I allowed plaintiff to proceed on a claim that defendants Belgado, Wegner and McCaughtry violated his right to receive adequate medical care by failing to provide him with sufficient pain medication. However, I granted defendants' motion for summary judgment on this claim because plaintiff failed to present evidence that the defendant had been deliberately indifferent to his serious medical need. Because that claim was decided on its merits, plaintiff cannot relitigate it in this case.

III. FAILURE TO STATE A CLAIM

In his complaint, plaintiff alleges that defendants Hoddy-Tripp and Blackbourn refused to allow him to speak with his attorney regarding a petition for review that she was filing on his behalf in October 2000 and that this denied him "unimpeded access to the courts." In the January 28 order, I granted plaintiff's request for leave to proceed on this claim, construing his complaint as alleging that because he was unable to confer with his attorney, she did not file a petition for review.

Attached to defendants' motion to dismiss are both the opinion of the state court of appeals in October 2000 and the subsequent petition for review in the Wisconsin Supreme Court by plaintiff's counsel, both of which are public records subject to judicial notice. Henson v. CSC Credit Services, 29 F.3d 280, 284 (7th Cir. 1994) (upholding district court's decision to take judicial notice of public documents filed with state court). As defendants point out in the petition for review, plaintiff's counsel raised each issue that she raised before the court of appeals. Plaintiff does not dispute this. Instead, he argues that his counsel did not "address all the issues of his concern." He refers to an issue relating to a juror "walking down 2 flights of stairs with him right before jury deliberations." Plt.'s Br., dkt. #24 at 5. He goes on to argue that because the *State* briefly discussed this argument in its brief before the court of appeals, his counsel should have raised it in the petition for review.

Regardless of the merit of the argument that plaintiff wanted counsel to raise, it is

undisputed that she did not raise it before the court of appeals. Therefore, she could not raise it before the supreme court. See State ex rel. Warren v. Schwarz, 219 Wis. 2d 615, 634, 579 N.W.2d 698, 707 (1998). Even if she had included the issue in the petition, the court would not have considered it. Plaintiff identifies no other ways in which he was harmed by not talking to his attorney before she filed his petition for review. Because there was no cognizable injury arising from his lack of access to counsel, plaintiff's claim must be dismissed.

To summarize, I conclude that plaintiff has exhausted his administrative remedies with his respect to his claim that defendants Belgado, Wegner, Meier and McCaughtry ignored his requests for medical care before his finger was partially amputated. In addition, I conclude that plaintiff was not required to identify defendants Hoddy-Tripp, Berge and Huibregtse by name in his inmate complaints. Thus, plaintiff has exhausted his administrative remedies with respect to his claim that defendant Hoddy-Tripp denied him eyeglasses and that Berge and Huibregtse knew of the deprivation and refused to intervene. In addition, the following claims remain on which defendants did not move to dismiss: (1) defendants McCaughtry, Belgado, Siedoschlag, Grahl, Meehan and Glaman retaliated against plaintiff for exercising his right to access the courts; (2) defendants Berge, Huibregtse and an unnamed defendant violated plaintiff's First Amendment rights when they allowed his legal mail to be opened and read outside his presence and copied and kept after reading;

(3) an unnamed defendant violated plaintiff's Eighth Amendment right to receive adequate medical care when he or she failed to treat his diabetes; (4) defendant Lind violated plaintiff's Eighth Amendment rights by threatening to withhold his medication; (5) an unnamed defendant violated petitioner's Eighth Amendment rights by refusing to provide him with a special diet for his diabetes; (6) an unnamed defendant violated plaintiff's Eighth Amendment rights by failing to provide him with adequate exercise; (7) an unnamed defendant violated plaintiff's Eighth Amendment rights by refusing to provide him with an extra mattress and special shoes. All other claims are dismissed.

ORDER

IT IS ORDERED that

1. The motion to dismiss filed by defendants Jim Wegner and Debra Blackbourn is DENIED with respect to plaintiff Harrison Franklin's claim that defendant Wegner violated his Eighth Amendment rights when he ignored plaintiff's requests for medical treatment until his finger had to be amputated. The motion to dismiss is GRANTED in all other respects.

2. Defendant Blackbourn is DISMISSED from this action.

3. The motion to dismiss filed by the remaining defendants is DENIED with respect to plaintiff's claims (1) that defendants Paulino Belgado, Holly Meier and Gary McCaughtry

violated the Eighth Amendment when they ignored his requests for medical care before his finger was amputated; (2) that defendant Linda Hoddy-Tripp denied plaintiff eyeglasses in violation of the Eighth Amendment; (3) that defendants Gerald Berge and Peter Huibregtse refused to stop the violations of plaintiff's constitutional rights while he was incarcerated at the Wisconsin Secure Program Facility. Defendants' motion to dismiss is GRANTED in all other respects.

Entered this 27th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge

-