

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

MICHAEL A. WRIGHT,

Plaintiff,

MEMORANDUM and ORDER
07-C-178-S

v.

LON BECHER, GARY BRIDGEWATER
and JUDY MCCRAY,

Defendants.

Plaintiff Michael A. Wright was allowed to proceed on his Eighth Amendment deliberate indifference to his serious medical need claim against defendants Lon Becher, Gary Bridgewater and Judy (Michelle) McCray. Plaintiff alleges in his complaint that defendants denied him treatment for Hepatitis C.

On July 23, 2007 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds there is no genuine dispute as to any of the following material facts.

Plaintiff Michael A. Wright is an inmate at the Oakhill Correctional Institution, Oregon, Wisconsin (OCI). Defendant Lon Becher is the Nursing Supervisor at OCI. Defendant Dr. Gary Bridge water is a physician at OCI. Defendant Michelle McCray is a Nurse Practitioner at OCI.

While he was incarcerated at the Sturtevant Transitional Facility on September 26, 2005 plaintiff was diagnosed with Hepatitis C which is a chronic liver infection caused by the Hepatitis C virus (HCV). HCV is treated by Interferon and Ribavirin. In order to be effective the treatment must be continuous for 48 weeks and cannot be restarted if stopped.

Inmates in the Department of Corrections are considered eligible for this treatment if they are between the ages of 18 and 60, have a remaining incarceration period of at least 18 months from the diagnosis of HCV and 12 months incarceration remaining from the start of the treatment, an elevated liver enzyme level greater than 50, at least 90 days abstinence from alcohol and the absence of any significant mental disease or other major medical illness.

When plaintiff was transferred to OCI on September 1, 2006 defendant Dr. Bridgewater noted that on August 20, 2006 the University of Wisconsin Hospitals and Clinics (UWHC) recommended treatment for plaintiff including Interferon and Ribavirin and periodic laboratory testing to monitor the treatment efficacy. Dr. Bridgewater believed that plaintiff's HCV was a serious medical need.

On September 20, 2006 plaintiff was transported to the UWHC Hepatology Clinic for followup and further assessment related to treatment for his HVC. The Clinic report recommended that plaintiff

begin a treatment of pegylated(PEG) Interferon and Ribavirin. The report also indicated that a mass on plaintiff's shoulder be evaluated for removal.

On October 2, 2006 Dr. Bridgewater examined plaintiff and discussed treatment with him. On October 6, 2006 Dr. Bridgewater saw plaintiff again. Plaintiff declined the recommended treatment because he wanted to be able to transfer to a facility that offered work release.

On or about October 30, 2006 plaintiff submitted a Health Services Request stated he wanted to begin medication for HVC. On November 6, 2006 defendant Michelle McCray saw plaintiff regarding his request. Defendant McCray submitted a request to the Department of Corrections Bureau of Health Services (BHS) for plaintiff to receive peylated Interferon and Ribavirin treatment. On November 6, 2006 the BHS denied the request because there was not enough time before plaintiff's mandatory release date on August 28, 2007 to complete the 48 week treatment. However the BHS stated that if plaintiff had resources to complete the treatment upon his release it would possibly reconsider its denial. On November 22, 2006 defendant McCray met with plaintiff to discuss his resources for continuing treatment upon his release. Plaintiff advised her that he did not have the resources for continuing the treatment. Defendant McCray advised Plaintiff that his request for treatment had been denied.

On November 30, 2006 plaintiff saw Dr. Bridgewater and stated that he had decided he would like to begin the treatment. Dr. Bridgewater noted that it was too late for him to begin the treatment regimen because his discharge date, August 28, 2007, was in 36 weeks. The guidelines for the treatment provide for 48 weeks of continuous treatment. Dr. Bridgewater did not treat plaintiff with Interferon and Ribavirin because he could not complete the therapy while in prison, partial treatment would be ineffective and perhaps harmful and plaintiff's health would not suffer any serious or irreversible harm by waiting to start the treatment after his discharge from prison.

In March and May 2007 Dr. Bridgewater ordered blood laboratory testing for plaintiff to monitor the functioning of his liver.

Defendant Lon Becher did not have any personal involvement in the diagnosis, medical care or treatment decisions relating to plaintiff's HCV.

MEMORANDUM

Plaintiff claims that defendants violated his Eighth Amendment rights by being deliberately indifferent to his serious medical need. Deliberate indifference to an inmate's serious medical need violates his or her Eighth Amendment rights. Wilson v. Seiter, 501 U.S. 294 (1991); Estelle v. Gamble, 429 U.S. 97 (1976). Deliberate indifference is defined as recklessness in the criminal sense. Farmer v. Brennan, 511 U.S. 825, 839-40 (1994). Mere negligence is

not actionable under the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319 (1986).

In Farmer the Court states that state officials are deliberately indifferent if they knew of and disregarded an excessive risk to an inmate's health or safety. The official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists and must also draw the inference. Farmer, 511 U.S. at 837.

For purposes of their motion for summary judgment defendants assume that plaintiff's HCV was a serious medical need. Defendant Bridgewater closely monitored plaintiff's HCV from the time he transferred to OCI on September 1, 2006. On September 20, 2006 plaintiff was assessed at the UWHC and treatment with Interferon and Ribavirin was recommended. On October 2 and 6, 2006 defendant Bridgewater discussed the recommended treatment with him. Plaintiff declined the treatment with Interferon and an Ribavirin because he wanted to transfer to a facility that offered work release.

On October 30, 2006 plaintiff notified Health Services that he wanted to begin the treatment. Defendant McCray forwarded his request to the Bureau of Health Services which denied the request because he did not have the required period of incarceration remaining which was necessary for the treatment. On November 30, 2007 Dr. Bridgewater met with plaintiff and discussed the denial of the treatment with him. He advised plaintiff that there was not

time for effective treatment with the medications prior to his release from incarceration. Dr. Bridgewater continued to monitor plaintiff's HCV while he was incarcerated at OCI. Defendant Lon Becher was not involved in plaintiff's treatment at OCI.

The undisputed facts indicate that plaintiff's HCV was closely monitored by defendant Bridgewater. Plaintiff declined the treatment with Interferon and Ribavirin offered by Dr. Bridgewater. He subsequently changed his mind and defendant McCray forwarded his request to BHS. The request was denied because it was too late for the treatment to be effectively administered while he was incarcerated. There is no evidence that any denial of the treatment which was caused by plaintiff's initial refusal caused him any harm. In addition, there is evidence that starting and stopping the treatment on his release would have harmed plaintiff.

There is no evidence that any defendant was deliberately indifferent to plaintiff's serious medical need. Accordingly, defendants are entitled to judgment as a matter of law on plaintiff's Eighth Amendment claim and their motion for summary judgment will be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

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ORDER

IT IS ORDERED that the defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 15th day of August, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge