IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JOHN RONALD HAAS,

Petitioner,

v.

WISCONSIN DEPARTMENT OF CORRECTION DOCTOR METODIO REYES, MARY ANNE SIMONIS, R.N., JULE DEGRAVE, R.N.,

Respondents.

OPINION & ORDER

03-C-224-C

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This is a proposed civil action for monetary and injunctive relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the Milwaukee County Jail in Milwaukee, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fees and costs of starting this lawsuit. Petitioner has paid the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if

the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner is a Wisconsin inmate presently confined in the Milwaukee County Jail. At the time he filed his complaint, petitioner was an inmate at the Redgranite Correctional Institution in Redgranite, Wisconsin. Respondent Dr. Metodio Reyes is employed as a medical doctor at the Green Bay Correctional Institution. Respondents Mary Anne Simonis and Jule Degrave are employed as registered nurses at the Green Bay prison.

Petitioner reviewed his medical records on December 9, 2002, and by December 16, 2002, he realized that his current health condition and the damages done to him all could have been prevented. Petitioner's blood tests dated March 19, 1998 and May 4, 1998, detected symptoms of a cardiac disease and the doctor's medical orders were not followed. Petitioner's May 4, 1998 cholesterol test results indicate that his (1) total cholesterol level

was 200.0 mg/dl and that the desired reference range is less than 200; (2) HDL cholesterol level was 33.0 mg/dl and that the desired range is 35 or more; (3) LDL cholesterol level was 145.0, placing him in the 130-160 "borderline high risk" category; (4) triglyceride level was in the desirable reference range; and (5) total cholesterol to HDL ratio was 6.1 and the desired ratio was below 4.0. Petitioner was not informed he was at risk for a heart attack. Petitioner's medical needs were ignored. The National Cholesterol Education Project recommends that dietary or drug treatment not be initiated on the basis of a single LDL cholesterol determination. The medical staff had to look at the results of a blood lab test and do more tests and inform petitioner that he had a problem. Wisconsin Department of Corrections staff were aware of petitioner's imminent danger but refused to do anything about it. Doctors failed to perform tests for cardiac disease even though petitioner had symptoms that called for the tests. On April 24, 2001, petitioner had a heart attack. He is now permanently impaired both mentally and physically.

OPINION

I understand petitioner to allege that after tests performed in 1998 showed that he had high cholesterol, respondents violated the Eighth Amendment when they failed to inform him of this fact or treat his elevated cholesterol level, which led to his heart attack in 2001. As an initial matter, I note that aside from the caption, petitioner never mentions

respondents Simonis and Degrave in his complaint. Rather, he refers generically to "the medical staff" or "Wisc. Dept of Corr staff." To recover damages for alleged constitutional violations, petitioner must establish each respondent's personal responsibility for the claimed deprivation. See Palmer v. Marion County, 327 F.3d 588, 594 (7th Cir. 2003) (noting that "§ 1983 lawsuits against individuals require personal involvement in the alleged constitutional deprivation to support a viable claim"). Because petitioner has failed to link any of his allegations to respondents Simonis or Degrave, he has failed to state a claim against them, even under liberal notice pleading standards. These respondents cannot answer a complaint that does not allege any conduct, unconstitutional or otherwise, on their part.

Petitioner also fails to mention respondent Reyes in the body of his complaint. However, I note that attached to petitioner's petition and affidavit for leave to proceed in forma pauperis are the results of his May 4, 1998 cholesterol test. The results appear to indicate that respondent Reyes was petitioner's treating physician at the time. Therefore, I assume that it is respondent Reyes who failed to inform or treat petitioner for his elevated cholesterol level. Nevertheless, I conclude that petitioner has failed to state a claim against respondent Reyes. 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 an Eighth

Amendment claim of cruel an unusual punishment, a prisoner must show that (1) he had a serious medical need and (2) the defendants were deliberately indifferent to it. Garvin v. Armstrong, 236 F.3d 896, 898 (7th Cir.2001); see also Estelle, 429 U.S. at 106 ("a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs"). The Court of Appeals for the Seventh Circuit has defined "serious medical needs" as encompassing 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 v. Peters, 111 F.3d 1364, 1371 (7th Cir. 1997). It is safe to assume that at some point, high cholesterol can be considered a serious medical condition.

The second requirement for purposes of the Eighth Amendment analysis, deliberate indifference, entails more than "mere negligence." Farmer v. Brennan, 511 U.S. 825, 836 (1994). Indeed, inadvertent error, negligence, gross negligence and medical malpractice are all insufficient grounds for invoking the Eighth Amendment. See Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); see also Snipes, 95 F.3d at 590-91; Franzen, 780 F.2d at 652-53. To demonstrate deliberate indifference, a prisoner must show that the prison official was aware of the prisoner's serious medical needs and disregarded an excessive risk that a lack of treatment posed to the prisoner's health or safety. Farmer, 511 U.S. at 837. Under the Eighth Amendment, a prison official's actions "must be deliberate or otherwise reckless in

the criminal law sense, which means that the defendant must have committed an act so dangerous that his knowledge of the risk can be inferred or that the defendant actually knew of an impending harm easily preventable." Snipes, 95 F.3d at 590.

Petitioner's cholesterol test results indicate that his (1) total cholesterol level was 200.0 mg/dl and that the desired reference range is less than 200; (2) HDL cholesterol level was 33.0 mg/dl and that the desired range is 35 or more; (3) LDL cholesterol level was 145.0 mg/dl, placing him in the 130-160 "borderline high risk" category; (4) triglyceride level was in the desirable reference range; and (5) total cholesterol to HDL ratio was 6.1 and the desired ratio was below 4.0. Petitioner does not allege that respondent Reyes intended to cause him harm. I cannot conclude from petitioner's test results that it was criminally reckless for Reyes not to inform petitioner about his slightly elevated cholesterol level or to treat it. See Qian v. Kautz, 168 F.3d 949, 955 (7th Cir. 1999) ("This court has observed that 'deliberate indifference' is simply a synonym for intentional or reckless conduct, and that 'reckless' describes conduct so dangerous that the deliberate nature of the defendant's actions can be inferred."). Indeed, it is not clear that petitioner has a claim for malpractice, much less a claim cognizable under the Eighth Amendment. Cf. Metzen v. United States, 19 F.3d 795, 803, 807 (2d Cir. 1994) (failure to place patient with total cholesterol level of 394 on cholesterol reducing diet may amount to malpractice).

Because petitioner has failed to state a claim that respondents Simonis, Degrave and

Reyes were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment, he will be denied leave to proceed in forma pauperis and his case will be dismissed.

ORDER

IT IS ORDERED that petitioner John Ronald Haas's request for leave to proceed in forma pauperis in this action is DENIED and this case is DISMISSED. A strike is recorded against plaintiff pursuant to 28 U.S.C. § 1915(g). The unpaid balance of petitioner's filing fee is $147.35; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2).

Entered this 28th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge