

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

JUAN VILLANUEVA-MONROY,

Plaintiff,

v.

DOCTOR J. REED and V. JONES,
Hospital Administrator,

Defendants.

OPINION and ORDER

05-C-0214-C

In this civil action brought pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), plaintiff Juan Villanueva-Monroy, a prisoner at the Federal Correctional Institution in Oxford, Wisconsin, contends that defendants James Reed and Victoria Jones, both employees of the prison's health services unit, violated his rights under the Eighth Amendment by failing to provide him with an oral antibiotic to treat a fungal infection on his fingers and feet. Plaintiff filed this action in April 2005, and initially was denied leave to proceed because I found that his allegations were insufficient to suggest that he had a serious medical condition or that defendants had exhibited deliberate indifference in their treatment of his infection. Order dated June 8,

2005, dkt. #5, at 4-5.

On June 20, 2005, plaintiff moved for reconsideration, alleging that his fungal infection was “deforming” him. Understanding plaintiff to be alleging that his condition was causing a deformity of his bones and not merely an unsightly disfiguring of his skin, I granted him leave to proceed. Order dated June 24, 2005, dkt. #8, at 2. Now before the court is defendants’ motion for summary judgment, which plaintiff has not opposed. Because the undisputed facts reveal that plaintiff’s fungal infection was not a serious medical condition and that defendants did not exhibit deliberate indifference to plaintiff’s health by the manner in which they provided him medical treatment, the motion will be granted.

From defendants’ proposed findings of fact, I find the following to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Juan Villanueva-Monroy is a prisoner incarcerated at the Federal Correctional Institution in Oxford, Wisconsin.

Defendant James Reed is a physician. He serves as medical director of the institution.

Defendant Virginia Jones is the Health Services Administrator at the institution.

B. Plaintiff's Medical Condition

Plaintiff suffers from onychomycosis, a fungal infection that can be acquired from contact with other people or through contact with commonly used floors, shoes, bathrooms, or other personal items. The infection affects plaintiff's feet and his right hand. Plaintiff's nail infection is not life threatening and is not likely to lead to any life threatening conditions.

Fungal nail infections are common medical problems. Doctors do not consider them to be serious unless the person suffering from the infection is diabetic, has a circulatory disorder, or is immunocompromised. Although fungal nail infections can cause discomfort, normally they are not painful. Because the infection can be unsightly, many patients find their self esteem affected by the disease.

While incarcerated, plaintiff has been treated on many occasions by both prison doctors and doctors in the local community for his fungal infection. In May 2001 and January 2003, prison medical staff gave plaintiff a prescription for an antifungal cream and instructed him on appropriate foot care hygiene.

On August 27, 2003, Dr. Richard Langen, a consulting podiatrist, examined plaintiff and concluded that he had athlete's foot, an ingrown toenail, onychomycosis and degenerative joint disease involving his right foot. Dr. Langen recommended that plaintiff be given Lamcil, an oral antifungal medication and that plaintiff continue applying an

anti-fungal solution to the infected areas of his body.

The following day, defendant Reed reviewed Dr. Langen's report. Because Lamcil was not on the local or national Bureau of Prisons drug formulary, and plaintiff did not qualify for an off-formulary prescription (because he did not have diabetes or an immunosuppressive illness), prison policy prohibited defendant Reed from prescribing Lamcil to plaintiff. The Bureau of Prisons' position concerning the prescription of oral antifungal medication is consistent with health insurance companies' approach to the same issue, insofar as antibiotics for foot care treatment are limited to persons with "metabolic or peripheral vascular disease, such as diabetes."

On October 9, 2003, a health service staff member (defendants do not say who) recommended that plaintiff apply an antifungal cream to his fingernails and an antifungal solution to his toe nails. Several weeks later, plaintiff reported at a medical visit that he was seeing signs of improvement. Therefore, his medication regimen was continued.

On April 5, 2004, defendant Reed told plaintiff that the Bureau of Prisons would not authorize oral antifungal medication for any patient who is not diabetic or immunocompromised. He also informed plaintiff that topical medications and creams are often not effective for treating his condition. Nevertheless, he asserted that persistent treatment with what was currently available was the only option available to plaintiff at that time.

On September 16, 2004, a prison physician assistant unfamiliar with the Bureau of Prisons' protocol concerning oral antifungal medications prescribed Lamcil for plaintiff. Because plaintiff did not qualify for the medication, the prescription was not filled.

On November 18, 2004, plaintiff was seen again by Dr. Langen, who debrided plaintiff's nail beds. (According to the American Heritage Dictionary (4th ed. 2004), debridement is the "surgical excision of dead, devitalized, or contaminated tissue and removal of foreign matter from a wound.") Dr. Langen diagnosed plaintiff again with onychomycosis and arthritis in his toe.

On February 7, 2005, plaintiff was seen by orthopedist Stewart Taylor, who agreed that topical solutions and medications were not effective in treating plaintiff's condition. Although Dr. Taylor believed that an oral antifungal was the best option for plaintiff, he suggested nail ablation or excision without ablation as alternative treatments. (Ablation is the "surgical excision or amputation of a body part or tissue." American Heritage Dictionary (4th ed. 2004). It is not clear how excision differs from ablation.)

At no time did defendant Jones participate personally in making clinical decisions regarding plaintiff's treatment.

DISCUSSION

A. Defendant Jones

Before turning to the substance of plaintiff's Eighth Amendment claim, I note that plaintiff has come forward with no evidence showing that defendant Jones was involved in the decision to deny plaintiff the antibiotic he wishes to take. Although federal officials may be sued for constitutional injuries under 28 U.S.C. § 1331, Bivens, 403 at 388, liability under Bivens must arise from the individual defendant's personal involvement in the deprivation of plaintiff's constitutional rights. Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994). In this case, it is undisputed that defendant Jones had no involvement whatsoever in deciding how plaintiff's fungal infection should be treated. Consequently, defendants' motion for summary judgment will be granted with respect to plaintiff's claim against defendant Jones.

B. Defendant Reed

That leaves plaintiff's claim against defendant Reed. Under the Eighth Amendment, a prison official may violate a prisoner's right to medical care if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). Although the condition does not have to be life threatening, "[t]he standard for Eighth Amendment violations contemplates

a condition of urgency that may result in degeneration or extreme pain.” Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998).

With respect to whether plaintiff had a serious medical need, the undisputed facts are that plaintiff suffers from a common fungal infection that is unsightly and uncomfortable, but that does not endanger plaintiff’s health or cause him pain. In short, it is far from clear that plaintiff’s condition qualifies as medically serious.

Even if plaintiff’s condition is the sort covered by the Eighth Amendment’s protections, plaintiff has adduced no evidence that defendant Reed was deliberately indifferent to his need for treatment. “Deliberate indifference” means that an official is aware that a prisoner needs medical treatment and disregards the need by failing to take reasonable measures to provide minimally adequate treatment. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). In this case, the undisputed facts show that from May 2001 until the time plaintiff filed this lawsuit, prison health staff treated him with some regularity, periodically consulting outside specialists in podiatry and orthopedics about his condition. Although all agreed that an oral antifungal medication was more likely to cure his infection than were the topical antifungal creams he had used without success, they agreed also that other options (such as debridement) were available to plaintiff and that he would not be endangered by the lack of an oral treatment. From these facts, I cannot conclude that defendants were deliberately indifferent to plaintiff’s need for medical care.

Although it is understandable that plaintiff would prefer the best possible treatment for his illness, prison officials are not constitutionally required to provide cutting edge medical care, especially when their failure to do so does not endanger a prisoner's health. The constitution guarantees care that is minimally adequate in the estimation of medical professions, not care that comports with a prisoner's own wishes. See, e.g., Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996) (whether or when a particular treatment is warranted is "classic example of a matter for medical judgment"). Because plaintiff has not shown that defendant Reed exhibited deliberate indifference to his serious medical needs by failing to provide him with an oral antifungal medication to treat his nail infection, defendants' motion for summary judgment will be granted.

ORDER

IT IS ORDERED that the motion for summary judgment of defendants Doctor James Reed and Virginia Jones is GRANTED. The clerk of court is directed to enter judgment in

favor of defendants and close this case.

Entered this 12th day of April, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge