

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

HARRISON FRANKLIN, on behalf
of himself and all those similarly situated,

Petitioners,

v.

GERALD BERGE, PETER HUIBREGTSE,
BURTON COX, JR., NURSE VICKY,
C/O MATHEW SCULLION, BRIAN KOOL,
M. HARPER, TIM HAINES, SHARON
ZUNKER, DR. DAVID BURNETT, JAMES
GREER, ANTHONY BROADBENT,
JOHN DOE/JANE DOE 1-100,

Respondents.

ORDER

05-C-251-C

In an order entered in this case on April 25, 2005, I denied petitioner's request for leave to proceed in forma pauperis without prejudice to his refiling his case after he has paid the amounts of his arrears in case no. 02-C-618-C. In addition, I requested the warden of the Wisconsin Secure Program Facility to notify this court when petitioner's debt becomes current.¹ Now petitioner has filed a motion for reconsideration, which I construe as a

¹Unfortunately, a typographical error in the April 25 order directs the warden to notify this court when petitioner's debt in case no. 99-C-344-C becomes current. Presumably, it is clear from the rest of the order that the correct case no. is 02-C-618-C.

motion pursuant to Fed. R. Civ. P. 59 for relief from the judgment of dismissal.

In support of his motion, petitioner argues that he should not be held accountable for the bookkeeping mistakes of the Wisconsin Secure Program Facility. However, as I told petitioner in the April 25 order, the Court of Appeals for the Seventh Circuit has held that prisoners must watch their accounts carefully to insure that prison officials are withdrawing the proper amounts and, if they are not, they must refrain from spending the money until it can be applied properly. Lucien v. DeTella, 141 F.3d 773, 776 (7th Cir. 1998).

Next, petitioner argues that he believes he qualifies for the exception in § 1915(g), because he alleged in his complaint that he is being forced to receive insulin injections and “unknown drugs” that he believes are life-threatening. In petitioner’s view, injections designed to drastically lower his blood sugar levels might do “intense damage to all internal organs.”

In the April 25 order, I considered whether any of the numerous claims petitioner raised in his complaint suggested that he was under imminent danger of serious physical injury. In deciding that petitioner did not qualify to proceed with this action under the exception to 28 U.S.C. § 1915(g), I noted that he had alleged that on one occasion, he was subjected to excessive force and injected with an “unknown substance” because he refused to take his medication. I concluded that none of his claims suggested even a remote possibility that his physical health might be compromised if he were not allowed to file suit immediately. Now, it appears that petitioner is suggesting that he may have been subjected

to more than one forced injection. Nevertheless, I am not convinced that any forced injection petitioner may be receiving threatens his health or safety.

Petitioner attached to his complaint a copy of a “discharge summary” from the University of Wisconsin Hospital and Clinics showing that he has been diagnosed with Type 2 diabetes mellitus. In addition, petitioner’s own allegations reveal that he is bi-polar and that he has refused to take certain of his medications. He alleges in his complaint that “Nurse Vicky told him in front of two other prison officials “that [his] blood sugars were high and [he] needed insulin and [he] needed to do accu-checks.” From these allegations, I find it more likely than not that any forced injection petitioner has received was an insulin injection designed to insure he does not suffer a life-threatening diabetic shock.

Because nothing petitioner argues in his motion for reconsideration convinces me that I erred in denying his request for leave to proceed in forma pauperis, the motion will be denied.

ORDER

IT IS ORDERED that petitioner’s motion pursuant to Fed. R. Civ. P. 59 for

reconsideration of the order entered in this case on April 25, 2005, is DENIED.

Entered this 19th day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge