

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

ROBERT E. ADSIT,

Petitioner,

v.

ORDER

05-C-579-C

DR. ROMAN KAPLAN, GLEN
HEINZL, THOMAS EDWARDS,
JUDY SMITH, CATHERINE FERRY,
CANDICE WARNER, JAMES GREER,
SHARON ZUNKER and MATTHEW FRANK,

Respondents.

In an order entered in this case on November 30, 2005, I directed petitioner to send the court a statement that he was to write himself, giving answers to questions I asked in the November 30 order. I told petitioner that if he did not answer the questions and explain how he thinks the respondents violated his rights, I would deny his request for leave to proceed in forma pauperis.

Now petitioner has filed a paper that he did not sign or date. The paper contains his answers to the court's questions. In many places, he says that he does not remember when he told respondents about his pain or his need for medical treatment. This makes me

wonder whether he filed inmate complaints about the matters he is raising in his proposed complaint in this court. Petitioner may not know that if he has not filed inmate complaints about the failure of the prison officials to treat his medical problems, he will probably not be able to sue those officials. The law requires prisoners to file complaints through the inmate complaint process before they bring suit against prison officials in federal court. This is to allow the prison officials to correct the problem. If petitioner is granted leave to proceed in forma pauperis, his lawsuit may have to be dismissed if it turns out that he has not filed complaints in the prison and followed the prison rules for appealing the denials of his complaints. If he has filed the proper complaints, then he should have copies of the complaints that will show the dates on which respondents refused to help him.

Petitioner's answers to the court's questions appear below. When the answers are not complete or are not helpful, I have explained why in the paragraph after petitioner's answer.

Question 1. When and where did you complain to respondent Kaplan about your pain?

Answer: It was 2004 at (OSCI) HSU unit when I complaint to Dr. Kaplan. He would not look at it or write anything down.

Petitioner does not say when in 2004 he complained to Dr. Kaplan. If he filed an inmate complaint about Dr. Kaplan's refusal to listen to him, he should be able to figure out

the date he complained to the doctor from his inmate complaint. If he did not file an inmate complaint, it is likely that he will not be able to sue Dr. Kaplan for his failure to treat him in 2004.

Question 2. At the time you complained, did respondent Kaplan examine you or talk with you about your symptoms?

Answer: Dr. Kaplan never examined me or talked to me over about it. He pushed me off.

Question 3. Did respondent Kaplan ever prescribe pain medication for you or advise you to purchase pain relievers at the canteen?

Answer: Dr. Kaplan ignored me completely . . . Dr. Kaplan said D.O.C. would not pay for my pains.

Again, petitioner does not say when Dr. Kaplan told him that the Department of Corrections would not pay for petitioner's pain. Also, it is not clear what petitioner means by saying that the department would not pay for his pains. If he means that Dr. Kaplan told him the department would not pay for medical care, he must tell the court what he asked for and what Dr. Kaplan refused to give him.

Question 4. What specifically did respondent Kaplan do or fail to do that supports your contention that he "did nothing" to care for your medical needs for 18 months?

Answer: While at O.S.C.I. Def. Dr. Kaplan would not treat me for my private part penis. He would not do anything for 13 months.

In his proposed complaint, petitioner said that Dr. Kaplan refused to do anything for 18 months, not 13 months. The record attached to petitioner's proposed complaint shows that he did not ask to be seen for penile pain until February 28, 2005. If petitioner believes that he told Dr. Kaplan about pain in his penis before February 28, 2005, he should say that he did and when it was. Again, he should have a copy of the inmate complaint he filed that would show when he told Kaplan about the pain.

Question 5. When did respondent Edwards learn of your complaints of pain?

Answer: Edwards is H.S.U. Mgr. and should know what's going on of all my complaints that I told Kaplan.

From this answer, I understand that petitioner has no information that Edwards knew about petitioner's complaints to Dr. Kaplan.

Question 6. What specifically did respondent Edwards do or fail to do that supports your contention that he "did nothing" to care for your medical needs for 18 months?

Answer: HSU claimed that they never received any HSU slips and Def. Kaplan didn't write anything down that I know.

I understand this answer to mean that HSU did not receive any requests to see petitioner because Dr. Kaplan never wrote any slips that would have told HSU that petitioner needed medical attention. If my understanding is wrong, petitioner should tell me what he does mean.

Question 7. When did respondent Smith learn of your complaints of pain?

Answer: I wrote the warden one time about the pain but she never wrote me back.

If petitioner wants to sue Warden Smith, he has to say enough about his claim to allow her to defend herself. He will have to say when he wrote her and what he said in his letter to let her know he was not being treated for his pain.

Question 8. What specifically did respondent Smith do or fail to do that supports your contention that she “did nothing” to insure your medical needs were being met?

Answer: Smith never wrote me back. She could have at least checked into it.

Again, if petitioner wants to sue Smith, he has to say when he wrote her and what he said.

Question 9. Did you complain to respondent Heinzl about your

penile pain before February 28, 2005? If so, when and where did you complain to him and what was his response?

Answer: I don't remember what time I was talking to Dr. Heinzl about my pain, but he would not treat it soon! He asked D.O.C. to approve it, which it took time while I'm in pain.

Petitioner must tell the court when he talked with Heinzl. He should have the information in his copy of his inmate complaint if he filed the necessary complaint against Heinzl.

Question 10. Do you deny that respondent Heinzl made an appointment for you to see a urologist at the University of Wisconsin and that you were treated at the hospital for your cancer?

Answer: No I don't denied. Def. Dr. Heinzl made an appointment for me to see a urologist, which at this time I did not know I had cancer.

Question 11. What specifically did respondent Heinzl do or fail to do that supports your contention that he "did nothing" to care for your medical needs?

Answer: He Dr. Heinzl could have gave me pain (medications) to

relieve my pains until I gotten to see a urologist at the university.

Question 12. Is it your contention that respondent Heinzl deliberately prescribed you a medication that he knew would cause you to suffer an allergic reaction? If so, what makes you think so?

Answer: Yes he deliberately prescribed a medication that he knew would cause me pain and to suffer. He is a doctor that knows medicine plus he knew “what other medications I was on, cause I have a heart condition. He mixed all medication together and made me take them.

Is petitioner saying that Heinzl knew all the medications petitioner was taking and made the decision to give him a medication that he knew would make him sick? Or is he saying that because Dr. Heinzl is a doctor, he should have known that giving petitioner certain medicine would make him sick?

Question 13. Is it your contention that respondent Warner knew in advance that respondent Heinzl was going to prescribe you a medication that he knew would cause you to suffer an allergic reaction and that she took no steps to stop Heinzl’s action? If so, what makes you think so?

Answer: Warner is the H.S.U. manager and she reviewed ~~only~~ a r t and knew what meds I was taking prior to me getting. So she knew something about my medication Def. Dr. Heinzl had prescribed. She know medications, just as a doctor.

As with the answer to Question No. 12, is petitioner saying that Warner was aware that the medication that Heinzl was giving petitioner would make him sick and that she sat back and watched petitioner suffer? Or is he saying that because Warner is a nurse, she should have known that the medication Heinzl gave petitioner would be harmful to him because of other drugs he was taking?

Question 14. Is it your contention that a Department of Corrections policy exists that forbids prison officials from providing you any and all treatment for your medical needs because of the cost? If so, what makes you think so?

Answer: Def. Dr. Kaplan told me so. That D.O.C. would not pay for it.

Now that petitioner has been provided care by an outside urologist, I do not understand how he can say that there is a department policy that forbids prison officials from providing him any treatment. Petitioner should explain the “policy” that he says Kaplan told him about and then say what he wanted that the state would not provide.

Question 15. Is it your contention that it is a policy of the Department of Corrections to refuse to cover the costs of “second opinions” from doctors outside the prison when an inmate requests such consultations?

Answer: I felt I was being (deprived) because I was not getting anything from Kaplan. O.S.C.I. so I assumed that I should at least received a second opinion.

* * * * *

I am concerned that petitioner may not have written the answers to the court’s questions himself. Instead, it appears that inmate Holman wrote the answers. (Holman uses parentheses to give importance to a word, which is something I have never seen anyone else do.) Petitioner admits in his response that he “had several people helping” him write his complaint. He says that “someone else” read the complaint to him before he signed it. He does not say that he does not know how to read or write. He does say that he does not “know how to write good.” Petitioner does not have to “write good.” All he has to do is say when he asked for help, what people he asked for help, what kind of help he wanted and whether the people he asked gave it to him or refused to give it to him.

If inmate Holman is writing petitioner’s complaint or answering the court’s questions, Holman’s efforts are not helpful to petitioner. Instead, Holman seems to be making petitioner’s claims hard to understand. Petitioner should know what happened to him. It

is clear that inmate Holman does not know. The proposed complaint that has been filed does not have enough information to allow the court to grant petitioner leave to proceed.

I will return a copy of petitioner's response to him. He should read the court's questions carefully or have someone else read them to him. He should add the information I have told him to add. When he believes that he has answered the questions as fully and as carefully as he can, he is to write the following words on the last sheet of questions:

I declare under penalty of perjury that each response to the court's Nov. 30 questions provided in this statement is true and correct.

Then he should take the paper to a notary public. He should sign his name to his answers while the notary public is watching him.

Once petitioner has signed the paper before a notary public, he should make a copy of the signed response for his own records. Then he should send the original signed and notarized copy to the court. The court will then consider petitioner's answers and decide whether he may proceed in forma pauperis on any or all of his claims. If petitioner is not truthful in responding to the court's questions, he could face consequences in the future, such as having his lawsuit dismissed or having a fine imposed on him.

ORDER

IT IS ORDERED that

Petitioner is to correct his answers to the questions in this court's November 30 order and sign the answers before a notary public. Then he is to send the notarized answers to the court. If he does not do so by January 13, 2006, I will deny his request for leave to proceed in forma pauperis. It is petitioner's duty to set out his claims in clear and plain language as required by Fed. R. Civ. P. 8.

Entered this 30th day of December, 2005.

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