

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

DEAN SNODGRASS,

Plaintiff,

v.

LISA GREGAR,

Defendant.

ORDER

05-C-608-C

Plaintiff Dean Snodgrass is a prisoner at the New Lisbon Correctional Institution in New Lisbon, Wisconsin. He is suing Lisa Gregar in this case for allegedly refusing to allow him to retrieve his hearing aids from New Lisbon's property storage area until he had seen a doctor, in violation of his Eighth Amendment rights. Early on in the lawsuit, plaintiff asked for appointed counsel to help him prosecute the case. I denied his request as premature. In particular, I told plaintiff that if defendant were to move to dismiss his claim on the ground that he had failed to exhaust his administrative remedies, he was certainly in a position to respond to such a motion on his own, because he should have copies of his inmate complaint and appeals to prove exhaustion. Subsequently, on March 9, 2006, a preliminary pretrial conference was held in this case. Because plaintiff claimed he could not

hear well enough to participate in the conference, the magistrate judge advised the parties that he would mail the parties a written order describing important deadlines and procedures to be followed in the case.

The preliminary pretrial conference order was mailed to plaintiff on March 14, 2006. In the beginning of the order, the magistrate judge directs the parties to read the order promptly. In the paragraph numbered 2 on page 5 of the order, the magistrate judge noted that defendant intended to file a motion to dismiss grounded on plaintiff's failure to exhaust his administrative remedies. The order provided that defendant would have until March 31, 2006, in which to file the motion, and that plaintiff would have until April 21, 2006, in which to serve and file his opposition to the motion. Defendant filed the motion on March 31, 2006, as permitted. Plaintiff did not oppose the motion. Instead, on May 6, 2006, he wrote a letter claiming to be confused about the status of his case. Because it does not appear that plaintiff sent a copy of his letter to Francis Sullivan, counsel for defendant, as he is required to do, I am enclosing a copy of the letter to him with this order.

In his letter, plaintiff claims that he could not understand what happened during the telephone portion of the preliminary pretrial conference. He contends that he wrote to the court to ask what he should do and received no response to his inquiry. (There is no record of plaintiff having filed any communication with the court between the time of the preliminary pretrial conference and May 6, 2006.) He admits that he received the

magistrate judge's written preliminary pretrial conference order, but contends that he doesn't "know what it was trying to tell me." However, plaintiff does not contend that he cannot read, and his complaint and subsequent submissions suggest that he has at least average writing skills. There is no excuse for plaintiff's having failed to respond to defendant's motion. However, in a gesture of abundant fairness, I will allow plaintiff two additional weeks in which to oppose defendant's motion. In opposing the motion, the critical question for plaintiff to answer is whether he filed an inmate complaint after August 3, 2004, the date he was transferred to the New Lisbon Correctional Institution, in which he claimed that defendant Lisa Gregar was refusing to allow him to retrieve his hearing aid out of property storage until he had seen an institution doctor. If plaintiff has documentation of his having filed such an inmate complaint, he should submit a copy of the complaint, together with copies of any responses he received to the complaint and any appeals he pursued.

ORDER

IT IS ORDERED that plaintiff may have until May 24, 2006, in which to oppose defendant's motion to dismiss his case for his failure to exhaust his administrative remedies on his claim against defendant Gregar. If, by May 24, 2006, plaintiff fails to oppose defendant's motion, I will dismiss this case for his failure to prosecute and direct the clerk of court to enter a judgment of dismissal without prejudice to plaintiff's refileing his

complaint after he has exhausted his administrative remedies.

Entered this 10th day of May, 2006.

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