IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

RUFUS WEST,

Plaintiff,

v. MEMORANDUM and ORDER

TODD EVERS, LEBBEUS BROWN and KATHERINE MCQUILLAN, 06-C-37-S

Defendants.

The above entitled matter was remanded to this Court from the United States Court of Appeals for the Seventh Circuit for further proceedings concerning plaintiff's Eighth Amendment claims against defendants Todd Evers, Lebbeus Brown and Katherine McQuillan. In his complaint plaintiff alleges that he was denied prescription medication and meals by the defendants.

On March 26, 2007 defendants Evers and Brown moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. Defendant McQuillan moved for summary judgment that same day. These motions have been fully briefed and are ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if

not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

FACTS

For purposes of deciding defendants' motions for summary judgment the Court finds there is no genuine dispute as to any of the following material facts.

At all times material to this action plaintiff Rufus West was incarcerated at the Wisconsin Secure Program Facility (WSPF), Boscobel, Wisconsin. Defendants Todd Evers and Lebbeus Brown are correctional officers at WSPF. Defendant Katherine McQuillan was a licensed practical nurse employed by Prison Health Services, Inc. to assist in the care and treatment of inmates at WSPF.

Plaintiff transferred to WSPF on September 6, 2001 and received an inmate handbook. The handbook indicates that correctional officers deliver all meals to the inmate's cell after an announcement over the public address system. The handbook

outlines the requirements for an inmate receiving a tray which include: wearing their pants, turning on the light and standing in the middle of the cell in full view of the officer. Inmates are advised in the handbook that failure to abide by these requirements is considered a meal refusal. If an inmate refuses meals on three consecutive days (9 meals) it is documented on an incident report and sent to the security Director and Health Services Unit (HSU) for evaluation and proper treatment.

According to the prison records, plaintiff refused supper on December 14, 2001, supper on December 15, 2001, breakfast and supper on December 16, 2001 and breakfast and lunch on December 17, 2001. This was during the time period that plaintiff was participating in the Ramadan fast.

On December 28, 2001 plaintiff was refused the lunch meal by defendant Brown because he refused to put on his pants. On December 31, 2001 plaintiff was refused his dinner meal by defendants Brown and Evers because he refused to put on his pants. Plaintiff refused his lunch tray on January 1, 2002. On January 7, 2002 defendant Evers denied plaintiff his supper because he refused to put on his pants. Defendant Evers denied plaintiff his lunch tray on January 8, 2002 when he refused to put on his pants.

Defendant Brown denied plaintiff dinner on March 12, 2002 because he refused to put on his pants for the lunch meal tray delivery. Defendants Brown and Evers denied plaintiff dinner on

March 16, 2002 because he refused to put on his pants. On April 15, 2002 he was denied one meal because he refused to put on his pants.

From December 13, 2001 through April 15, 2002 there would have been 366 meals provided to inmates. The total number of meals plaintiff did not receive because of his failure to comply with requirements of meal delivery are 62 meals. Defendants Evers and Brown denied plaintiff 22 meals during this time period because of his failure to comply with the rules. Plaintiff received an average of 2.5 meals a day.

The inmate handbook also provides the requirements for medication delivery which are the same as for meal delivery. The inmates must wear pants, turn on the light and stand in the middle of the cell in full view of the officer. Failure to comply with these requirements is considered a refusal of medications.

On December 23, 2001 plaintiff refused Tylenol and Zantac during the morning medication pass because he failed to comply with the necessary requirements. He received Tylenol at the noon medication delivery.

On December 25, 2001 plaintiff refused Tylenol on the morning mediation delivery but received it at bedtime. On December 30, 2001 plaintiff received Zantac during the evening medication pass.

On February 18, 2002, March 12, 2002 and March 13, 2002 plaintiff verbally refused Salsalate which is a mild pain medication during the supper medication delivery.

On April 2, 4 and 6, 2002 plaintiff refused Celexa which is an antidepressant and Dibucaine Ointment (for hemorrhoids). On April 10, 2002 plaintiff received the Dubucaine ointment but refused the Celexa. On April 12, 2002 plaintiff refused Naproxen during the evening medication pass. Naproxen is a mild pain reliever.

MEMORANDUM

Plaintiff was allowed to proceed on his Eighth Amendment claims that defendants denied him food and medications. Defendants move for summary judgment on these claims. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

The Court held in Freeman v. Berge, 441 F.3d 543, 544-545 (7th Cir. 2006), that the denial of food is an unusual form of punishment but it is only cruel if it inflicts serious harm on the prisoner. The Court found that there is a difference between food deprivation as a punishment and establishing a reasonable condition to the receipt of food. Id. The Court specifically found that the WSPF requirement that inmates wear pants, turn on the light and stand in the middle of the cell was a reasonable condition to the receipt of food.

In this case plaintiff was required to comply with the same requirements which were found to be a reasonable condition to the receipt of food in Freeman. Because plaintiff failed to comply with this reasonable condition defendants Evers and Brown refused plaintiff 22 meals from a total of 366 meals from December 13, 2001 though April 15, 2002. Plaintiff has not presented any evidence that the denial of these meals inflicted serious harm on him. Accordingly, defendants Brown and Evers are entitled to judgment in their favor on plaintiff's Eighth Amendment claim that their actions were cruel and unusual punishment.

Plaintiff also contends that his Eighth Amendment rights were violated when defendants Ever, Brown and McQuillan denied him medication. Allegations of deliberate indifference to an inmate's serious medical need state a cause of action under the Eighth Amendment. Estelle v. Gamble, 429 U.S. 997 (1976). Deliberate indifference exists when an official knows of and disregards a serious medical condition and the official is "aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994).

It is undisputed that because of plaintiff's refusal to comply with medication delivery requirements he was denied Tylenol, Naproxen, Salsalate, Celexa and Dibucaine ointment on several occasions. There is no evidence in the record that the missed

doses of these medications caused plaintiff any harm. Further there is no evidence that defendants were deliberately indifferent to any serious medical need of plaintiff. Accordingly, defendants are entitled to judgment in their favor on plaintiff's Eighth Amendment deliberate indifference complaint concerning the denial of his medications.

Defendants are entitled to judgment as a matter of law on plaintiff's Eighth Amendment claims. Accordingly, their motion for summary judgment will be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendants' motions for summary judgment are GRANTED.

IT IS FURTHER ORDERED that judgment is entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 30th day of April, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge