

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

CALVIN L. MARTIN,

Plaintiff,

v.

ORDER

MATTHEW FRANK, JAMES GREER, PAMELA
WALLACE, BRUCE GERLINGER, SHARON K.
ZUNKER, RENE ANDERSON, DR. DAVID ROCK,
BECKY DRESSLER, B. BEAUDETTE, OFFICER TURNER,
DAWN KOEPPEN, KATHLEEN BERKLEY, SANDRA
HAUTAMAKI, RICK RAEMISCH, JOHN R. HOCH
and MATTHEW KOOPMAN,

06-C-282-S

Defendants.

Upon receipt of plaintiff's partial filing fee in the amount of \$18.62, the above entitled matter will be reopened. The Court addresses the merits of his initial complaint. According to 28 U.S.C. § 1915(b)(2), the institution's financial officer is authorized to deduct monthly payments from plaintiff's account until the \$350.00 filing fee is paid in full.

Plaintiff alleges that on July 14, 2005 Officer Turner ordered plaintiff to use a jackhammer without foot protection and his right toe was crushed. He also alleges Officer Turner failed to immediately contact the Health Services Unit.

Plaintiff further alleges that Nurse Renea Anderson told him his toe would need only ice and elevation. She evaluated his toe again on July 30, 2005, August 5, 2005, August 22, 2005, September 27, 2005 and October 31, 2005. The nurse had prior knowledge of

plaintiff's diabetes with vascular disease and his history of hepatitis C. On November 3, 2005 Nurse Beaudette noted that plaintiff's toe continued to be inflamed and tender. Dr. Gerlinger prescribed antibiotics for plaintiff. On November 16, 2005 plaintiff's toe was amputated.

Plaintiff claims that he did not receive proper treatment from defendants Turner, Andersen, and Gerlinger when he broke his toe which resulted in it being amputated. 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. 97 (1976).

Plaintiff's toe was treated numerous times. Failure to properly treat it because of his diabetes may rise to a claim for Eighth Amendment deliberate indifference. Accordingly, he will be allowed to proceed in forma pauperis on his Eighth Amendment claim against defendants Turner, Anderson, Beaudette and Gerlinger.

Plaintiff has not alleged facts that support any other claims against any other defendants. Accordingly, the remaining claims and defendants will be dismissed.

ORDER

IT IS ORDERED that the above entitled matter is REOPENED.

Martin v. Frank, et al., 06-C-282-S

IT IS FURTHER ORDERED that plaintiff will be allowed to proceed on his Eighth Amendment deliberate indifference claim against defendants Renea Anderson, B. Beaudette, Officer Turner and Dr. Gerlinger.

IT IS FURTHER ORDERED that all remaining claims and defendants will be DISMISSED.

The summons and complaint are being delivered to the United States Marshal for service on the defendants Officer Turner, Dr, Bruce Gerlinger, Renea Anderson and B. Beaudette at the Stanley Correctional Institution, 100 Corrections Drive. Stanley, Wisconsin, 54768.

Entered this 5th day of July, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge