

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

CALVIN L. MARTIN,

Plaintiff,

v.

MEMORANDUM AND ORDER
06-C-282-S

BRUCE GERLINGER, RENEA ANDERSON,
B. BEAUDETTE and OFFICER TURNER,

Defendants.

Plaintiff Calvin L. Martin was allowed to proceed on his Eighth Amendment deliberate indifference claim against defendants Bruce Gerlinger, Renea Anderson, B. Beaudette and Officer Turner. In his complaint he alleges that the defendants were deliberately indifferent to his serious medical need.

On October 2, 2006 defendants moved to dismiss plaintiff's complaint for failure to exhaust administrative remedies. Pursuant to this Court's July 28, 2006 scheduling order plaintiff's response to this motion was to be filed not later than October 23, 2006 and has not been filed to date.

FACTS

Plaintiff is incarcerated at the Stanley Correctional Institution, Stanley Wisconsin (SCI). Defendants Bruce Gerlinger, Renea Anderson, Brenda Beaudette and Officer Turner are employed at SCI.

On August 10, 2005 plaintiff filed inmate complaint SCI-2005-24635 complaining that Nurse Renea and the Doctor failed to properly treat his injured toe. The institution complaint examiner dismissed his complaint. On August 29, 2005 Reviewer Kathleen Berkley dismissed his complaint with modification.

On March 31, 2006 plaintiff appealed this decision to the Corrections Complaint Examiner (CCE). Sandra Hautamaki, the CCE, dismissed it as untimely because it was to be filed within ten days of the reviewer's decision. Wisconsin Administrative Code § DOC 310.13(1). Deputy Secretary Rick Raemisch affirmed the dismissal of the appeal as untimely on April 17, 2006.

MEMORANDUM

Defendants move to dismiss plaintiff's complaint for failure to exhaust his administrative remedies. Pursuant to 42 U.S.C. § 1997e(a), no action shall be brought with respect to prison conditions by a prisoner confined in any jail, prison or other correctional facility until available administrative remedies are exhausted. Prisoners must file their complaints and appeals in the place and at the time the prison's administrative rules require. Pozo v. McCaughtry, 286 F. 3d 1022, 1025 (7th Cir. 2002)

In Perez v. Wisconsin Department of Corrections, 182 F.3d 532, 535 (7th Cir. 1999), the Court held as follows:

...a suit filed by a prisoner before administrative remedies have been exhausted

must be dismissed; the district court lacks discretion to resolve the claim on the merits, even if the prisoner exhausts intra-prison remedies before judgment.

The Court has reviewed the inmate complaints filed by plaintiff and concludes that he did not completely exhaust his administrative remedies on his claim that defendants denied him proper medical treatment. Accordingly, Perez requires dismissal of plaintiff's complaint because he did not exhaust his administrative remedies prior to commencing this action.

ORDER

IT IS ORDERED that defendant's motion to dismiss for plaintiff's failure to exhaust his administrative remedies is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendant against plaintiff DISMISSING his complaint without prejudice for his failure to exhaust his administrative remedies.

Entered this 26th day of October, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge