

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

JOHNNY LACY, JR.,

Plaintiff.

v.

ORDER

MATTHEW J. FRANK, STEVE CASPERSON,
RICK RAEMISCH, JOHN RAY, J. GREER,
CYNTHIA THORPE, RICHARD A. SCHNEITER,
PETER HUIBREGTSE, B. COX, CINDY SAWINSKI,
JOLINDA WATERMAN, KELLY TRUMM, ELLEN K.
RAY and LT. GERL,

06-C-284-S

Defendants.

Upon receipt of plaintiff's partial filing fee in the amount of \$1.50 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.

Although plaintiff's allegations are not entirely clear it appears he is alleging that in July 2005 defendants Jolinda Waterman, Cindy Sawinski and Lt. Gerl were deliberately indifferent to his serious medical need, insulin dependent diabetes. He will be allowed to proceed on this Eighth Amendment claim.

Plaintiff's remaining allegations concern denial of due process in his institution placement. In Zinermon v. Burch, 439

U.S. 113 (1990), the United States Supreme Court held that a deprivation of an individual's liberty interest does not state a claim under the Fourteenth Amendment due process clause if adequate state post deprivation remedies exist. Petitioner has adequate state post deprivation remedies including administrative remedies, a state petition for a writ of habeas corpus and a state court action for damages. Accordingly, he will not be allowed to proceed on his due process claims.

Plaintiff has also moved to amend to supplement his pleadings to add additional defendants concerning his due process claim. This motion will be denied.

Plaintiff moves to recuse this Court. This Court is neither prejudiced nor biased against plaintiff. Accordingly his motion to recuse the Court will be denied. 28 U.S.C. § 144 and 28 U.S.C. §455.

Plaintiff will be allowed to proceed on his Eighth Amendment claim against defendants Waterman, Sawinski and Gerl. The remaining claims and defendants will be dismissed.

ORDER

IT IS ORDERED that plaintiff's motion to amend and supplement the complaint is DENIED.

IT IS FURTHER ORDERED that plaintiff's motion for substitution of judge is DENIED.

Lacy v. Frank, et al., 06-C-284-S

IT IS FURTHER ORDERED that plaintiff is allowed to proceed on his Eighth Amendment deliberate indifference claim against defendants Jolinda Waterman, Cindy Sawinski and Lt. Gerl.

IT IS FURTHER ORDERED that all other claims and defendants are DISMISSED without prejudice.

The summons and complaint are being delivered to the United States Marshal for service upon defendants Jolinda Waterman, Cindy Sawinski and Lt. Gerl at the Wisconsin Secure Program Facility, 1101 Morrison Drive, Boscobel, Wisconsin, 53805.

Entered this 12th day of June, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge