

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

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FRANCISCO RUIZ,

Plaintiff,

v.

GLEN HEINZL, M.D.;  
CANDACE WARNER, RN, BSN, GSM;  
WARDEN TIMOTHY LUNDQUIST;  
SECRETARY MATTHEW FRANK;  
RICK RAEMISCH;  
SANDRA HAUTAMAKI;  
SHARON ZUNKER; and  
MILDRED PRAISE,

Defendants.  
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OPINION AND ORDER

06-C-478-C

This is a civil action for injunctive, declaratory and monetary relief, brought pursuant to 42 U.S.C. § 1983. Plaintiff Francisco Ruiz, a former inmate at the New Lisbon Correctional Institution and Oakhill Correctional Institution contends that defendants Dr. Glen Heinzl, Candace Warner, Timothy Lundquist, Matthew Frank, Rick Raemisch, Sandra Hautamaki, Sharon Zunker and Mildred Parise denied his request for medical treatment of hepatitis C in violation of the Eighth Amendment. Jurisdiction is present. 28 U.S.C. § 1331.

Presently before the court is defendants' motion for summary judgment filed collectively by all defendants. Defendants concede that they refused to provide treatment to plaintiff, but they argue that their refusal was justified because there was not enough time to complete treatment. Because a break in treatment could require the patient to start treatment all over again, the policy of the Department of Corrections is to forgo treatment when there is not enough time to complete it before prisoner's release date.

Plaintiff did not file proposed findings of fact or respond to defendants' proposed findings of fact, which means I must treat defendants' proposed findings of fact are undisputed. Procedure to be Followed on Motions for Summary Judgment, II.C. From those facts, I cannot conclude that a reasonable jury could find that defendants acted with deliberate indifference by refusing plaintiff medical treatment. Without any medical evidence from plaintiff, there is no basis from which it may be inferred that defendants' treatment decisions were "blatantly inappropriate" as they would have to be in order to violate the Eighth Amendment. Additionally, plaintiff failed to adduce any evidence that defendants' failure to treat him has caused his condition to worsen. Therefore, defendants' motion for summary judgment must be granted.

From defendants' proposed findings of fact, I find the following facts to be material and undisputed.

## UNDISPUTED FACTS

### A. Parties

At all material times, plaintiff Francisco Ruiz was a former inmate at the New Lisbon Correctional Institution and Oakhill Correctional Institution. Defendants are all employees of the Wisconsin Department of Corrections. The following defendants were employed at the New Lisbon Correctional Institution: Glen Heinzl was a physician; Candace Warner was the Health Service Director; Mildred Parise was an institution complaint examiner; Timothy Lundquist was the warden. Defendant Sharon Zunker was the Nursing Coordinator of the Department of Corrections Bureau of Health Services and a licensed registered nurse. Defendant Sharon Hautamaki was a corrections program supervisor. Defendant Matthew Frank was Secretary of the Department of Corrections; defendant Rick Raemisch was Deputy Secretary.

### B. Plaintiff's Medical Treatment

Plaintiff was housed at the Dodge Correctional Institution on January 23, 2006 when a laboratory report revealed a positive test for hepatitis C. At the time, his liver enzymes alanine aminotransaminase ("ALT") were 56 IU. Under Department of Corrections policy, no treatment for hepatitis C is provided until two antibody tests reveal an ALT level of 75 IU or higher. Another ALT test was scheduled in four months. Plaintiff was given a physical

examination and education on hepatitis C.

On March 17, 2006, during an appointment with plaintiff, defendant Heinzl informed plaintiff that even if his ALT level rose, he probably would not have enough time left in the institution to qualify for treatment. The Department of Corrections' policy prohibits treating inmates with hepatitis C unless they can complete treatment while they are incarcerated. In the case of an inmate with hepatitis C genotype 1, he or she is not eligible for treatment unless his or her release date is more than 12 months away. This policy is in place to insure continuity of care from the start of treatment to the finish for inmates with hepatitis C; if treatment is interrupted the entire regimen may need to be restarted.

Defendant Heinzl ordered several different medical tests for plaintiff. On March 29, 2006, a blood chemistry liver function test showed plaintiff's ALT was elevated at 90. Although this level was sufficiently high to merit treatment, it could not begin until a second test revealed elevated levels. The second test was not scheduled until October 2006.

On April 20, 2006, lab work confirmed that plaintiff had hepatitis C, genotype 1a. Defendant Heinzl told plaintiff that he did not qualify for treatment because of his April 2007 mandatory release date.

On October 3, 2006 plaintiff was transferred from New Lisbon to the Oakhill Correctional Institution. (Defendants propose no facts concerning whether plaintiff received

a second test in October 2006.)

Plaintiff filed several requests and appeals concerning the decision not to treat him during the following weeks. Defendant Heinzl met with plaintiff and explained the reason he did not qualify for treatment. On June 20, 2006, plaintiff filed a grievance for denial of treatment, which defendant Parise recommended for dismissal, noting that plaintiff would not be incarcerated for the length of time the treatment would require. Defendants Zunker, Hautamaki and Raemisch affirmed the dismissal.

Plaintiff was released from prison in April 2007.

## OPINION

### A. Legal Standard

In addressing a motion for summary judgment, a court applies well-established standards. Summary judgment is appropriate when there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Weicherding v. Riegel, 160 F.3d 1139, 1142 (7th Cir. 1998). If the nonmovant fails to make a showing sufficient to establish the existence of an essential element on which that party will bear the burden of proof at trial, summary judgment for the moving party is proper. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). As the party that will bear the burden of proof at trial, plaintiff was required to respond to defendants' motion for summary

judgment with evidence to support each element of his claim. Id. If plaintiff has failed to make a showing sufficient to establish the existence of an essential element on which he will bear the burden of proof at trial, summary judgment for the defendants is proper. Id.

#### B. Injunctive and Declaratory Relief

In his complaint, plaintiff seeks injunctive, declaratory and monetary relief for defendants' failure to treat him during his term of incarceration. Presumably, the declaratory and injunctive relief he seeks is to invalidate the department's hepatitis C policy and prohibit its future enforcement.

Injunctive relief is designed to deter future conduct, not punish past misdeeds. Rondeau v. Mosinee Paper Corp. 422 U.S. 49, 62 (1975). Because petitioner is no longer an inmate, the state of Wisconsin no longer has any obligation under the Eighth Amendment to provide for plaintiff's medical needs. A claim becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. Murphy v. Hunt, 455 U.S. 478, 481 (1982). Because the chances are extremely remote that plaintiff could ever be subject to the policy again, plaintiff's claim for injunctive relief is moot.

Declaratory relief is also unavailable as a remedy for plaintiff. Generally, courts do not distinguish between claims for injunctive and declaratory relief when determining

whether such claims are moot. Higgason v. Farley, 83 F.3d 807 (7th Cir. 1995) (claims for injunctive relief and for declaratory relief dismissed as moot for same reasons). None of the exceptions that would allow plaintiff to maintain his claim for declaratory relief is present in the facts of this case. His claim for declaratory relief is therefore also moot. Plaintiff's claim for money damages is his only remaining claim.

### C. Claim for Damages

The Eight Amendment requires the government "to provide medical care for those whom it is punishing by incarceration." Snipes v. Detella, 95 F.3d 586, 590 (7th Cir. 1996) (quoting Estelle v. Gamble, 429 U.S. 97, 103 (1976)). Under that standard, the issue is whether defendants were deliberately indifferent to a serious medical need of plaintiff. Sanders v. Sheahan, 198 F.3d 626, 630 (7th Cir. 1999).

The first question is whether plaintiff had an objectively serious medical need. Attempting to define "serious medical needs," the Court of Appeals for the Seventh Circuit has held that they encompass not only conditions that are life-threatening but also those in which withholding of medical care results in needless pain and suffering. Gutierrez v. Peters, 111 F.3d 1364 (7th Cir. 1997). Defendants concede that plaintiff suffers from hepatitis C, a potentially life-threatening disease. Defendants do not dispute the dangers of this condition or deny that it rises to the level of a serious medical need. Therefore, for the

purposes of ruling on defendants' summary judgment motion, I will assume that plaintiff has alleged this element of an Eighth Amendment claim.

Plaintiff's claim fails nevertheless because he has not met his burden on summary judgment to show that a reasonable jury could find that defendants were deliberately indifferent to his health. First, he has provided the court with no basis for finding the Department of Corrections' policy toward inmates with hepatitis C unreasonable. A treatment decision does not violate the Eighth Amendment unless it is "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition," Snipes, 95 F.3d at 582. In this case, plaintiff has adduced no medical evidence challenging the reasonableness of defendants' policy. Judges are not doctors and cannot question the medical merit of treatment policies without some basis in fact for doing so.

Plaintiff's only response to defendants' motion for summary judgment and proposed findings of fact was a "brief," which was a copy of a Supreme Court case concerning standards for determining whether a complaint states a claim upon which relief may be granted. That case cannot help plaintiff because the liberal standards for determining the sufficiency of a complaint do not apply in the context of a motion for summary judgment. A party opposing summary judgment must come forward with evidence to support each element of his claim on which he will bear the burden of proof at trial. Celotex, 477 U.S.



at 322. Plaintiff failed to do this.

A second reason requiring dismissal is that plaintiff has not demonstrated that he was harmed by being denied treatment pursuant to the Department of Corrections' policy. The Court of Appeals for the Seventh Circuit has explained that proof of an actual injury is needed for a deliberate indifference claim. Doe v. Welborn, 110 F.3d 520, 523 (7th Cir. 1997). Plaintiff has failed to put forward evidence demonstrating that his condition worsened as a result of defendants' failure to treat him. Although it may be that the absence of treatment harmed plaintiff, I may not simply assume this at the summary judgment stage.

#### ORDER

IT IS ORDERED that the motion of defendants Glen Heinzl, Candace Warner, Timothy Lundquist, Matthew Frank, Rick Raemisch, Sandra Hautamaki, Sharon Zunker and Mildred Praise for summary judgment is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 16th day of July, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge