

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

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DENNIS RICHARDSON,

Plaintiff,

v.

RICK RAEMISCH, Secretary,  
Department of Corrections,

Defendant.  
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OPINION and ORDER

08-cv-200-bbc

In this civil action brought under 42 U.S.C. § 1983, plaintiff Dennis Richardson asserts that he is receiving inadequate treatment for post-traumatic stress disorder, in violation of his rights under the Eighth Amendment to the United States Constitution. Plaintiff is a prisoner who is presently housed at the Waupun Correctional Institution in Waupun, Wisconsin. On May 7, 2008, I screened plaintiff's complaint pursuant to 28 U.S.C. § 1915A and determined that he did not state a claim as to Rick Raemisch, the only defendant he had named at that time. However, because his complaint suggested that he may have a viable claim against other prison officials, I provided him a short time in which to file an amended complaint in which he named those officials instead. Plaintiff has now

filed an amended complaint, renaming Rick Raemisch as a proposed defendant and naming two additional defendants, Jodine Deppisch and a Dr. Elliott. This amended complaint must be screened as well.

From a review of plaintiff's amended complaint and that materials attached to it, I understand him to allege the following.

### FACTS

Plaintiff Dennis Richardson is a prisoner who is housed at the Waupun Correctional Institution in Waupun, Wisconsin. He was housed previously at the Fox Lake Correctional Institution in Fox Lake, Wisconsin. Defendant Rick Raemisch is the secretary of the Wisconsin Department of Corrections. At times relevant to this complaint, defendant Jodine Deppisch was the warden and defendant Elliott a doctor at the Fox Lake Correctional Institution.

Plaintiff has been diagnosed with post-traumatic stress disorder. His condition is becoming more severe. In 1995, he was found to be 10% disabled. In 1999, he was 30% disabled. In 2006, he was 50% disabled. Plaintiff's post-traumatic stress disorder causes him to have persistent severe nightmares and anger management problems. Plaintiff's anger management problems cause him to fight and break prison rules, which results in discipline.

Plaintiff suffers from a severe heart condition, which is worsened by his post-

traumatic stress disorder. His heart condition makes it inadvisable for plaintiff to take psychiatric medication for his post-traumatic stress disorder.

Plaintiff was housed at the Fox Lake Correctional Institution in 2003. Defendant Elliott was responsible for plaintiff's mental health care needs. Plaintiff told defendant Elliott and defendant Deppisch, the warden, that he was experiencing nightmares and sleeplessness because of his condition. He told them also that he was experiencing aggressive feelings and requested treatment. After plaintiff asked defendant Elliott to provide him with some form of treatment for his condition, defendant Elliott refused to meet with plaintiff or to treat plaintiff with group or individual therapy or medication.

The Wisconsin Department of Corrections operates all of the prisons in the state of Wisconsin. Plaintiff has requested treatment for his post-traumatic stress disorder for the last ten years. No prison in the state offers treatment for post-traumatic stress disorder.

## DISCUSSION

### A. Relief Unavailable in this Lawsuit

As I explained to plaintiff when I screened his original complaint, under no circumstances may I grant his request for release on parole so that he may receive treatment at the veterans' hospital. Oddly, plaintiff includes this request for relief in his amended complaint as well. For the reasons expressed in this court's order of May 6, 2008, plaintiff's

request for speedier release will not be considered in the context of this case.

B. Lack of Treatment for Post-Traumatic Stress Disorder

Next, plaintiff alleges that he suffers from severe post-traumatic stress disorder, for which he is receiving no treatment. The Eighth Amendment to the United States Constitution 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)). To prevail ultimately on a claim under the Eighth Amendment, a prisoner must prove that prison officials engaged in “acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” Estelle, 429 U.S. at 106.

A “serious medical need” may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584 -85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or otherwise subjects the detainee to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). “Deliberate indifference” means that the officials were aware that the prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir.

1997).

Thus, under this standard, plaintiff's claim is analyzed in three parts:

- (1) Whether plaintiff had a serious mental health care need;
- (2) Whether defendant knew that plaintiff needed care; and
- (3) Despite his awareness of the need, whether defendant failed to take reasonable measures to provide the necessary care.

Plaintiff does not have to allege the facts necessary to establish each of these elements at the pleading stage, but they provide the framework for determining whether plaintiff has alleged enough to give defendants notice of his claims and whether there is a set of facts consistent with plaintiff's allegations that would entitle him to relief. Kolupa v. Roselle Park District, 438 F.3d 713, 715 (7th Cir. 2006); Doe v. Smith, 429 F.3d 706, 708 (7th Cir. 2005).

It is well settled that the Eighth Amendment protects the mental, as well as physical health of prisoners. E.g., Sanville v. McCaughtry, 266 F.3d 724, 734 (7th Cir. 2001); Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987). Plaintiff's post-traumatic stress disorder may well constitute a serious medical condition that warrants some form of treatment. He alleges it left him 50% disabled in 2006, is worsening and causes him to experience regular nightmares. Plaintiff asserts that medication is "not advisable" in his case because of his heart condition. Therefore, he argues, he requires counseling services as an

alternative treatment. The remaining question is whether there is any indication that defendants were deliberately indifferent to his need for treatment.

Plaintiff alleges that he told respondents Elliott and Deppisch about the severity of his post-traumatic stress disorder and that they refused to provide any treatment whatsoever. Plaintiff's complaint indicates that defendants Elliott and Deppisch were aware of plaintiff's need for medical care and that they refused to do anything about it. At this early stage, this is sufficient to state a claim under the Eighth Amendment against them.

Next, as I noted in the previous order, it is somewhat difficult to discern what plaintiff's theory of liability is with respect to defendant Raemisch. Perhaps plaintiff's allegation that "No prison in the state of Wisconsin offers treatment for post-traumatic stress disorder" can be understood as a challenge to a de facto policy of the Department of Corrections. A prison official may be liable under § 1983 if he creates or implements an unconstitutional policy or practice. Hammer v. Ashcroft, 512 F.3d 961, 970 (7th Cir. 2008).

When I screened plaintiff's original complaint, I understood him to allege only that the Department of Corrections does not provide group counseling for post-traumatic stress disorder and observed that "a policy disallowing group counseling does not violate the Constitution if individual counseling or some other adequate form of treatment is available to prisoners who are unable to take medication." As noted above, in his amended complaint,

plaintiff specifies that *no* treatment is offered to prisoners who suffer from post-traumatic stress disorder. Accepting this allegation as true, as I must at this point, plaintiff states a claim against defendant Raemisch, because it is reasonable to infer that Raemisch, as the head of the Department of Corrections, is responsible for this policy and that such a policy of non-treatment would violate the Eighth Amendment.

One final matter requires attention. In plaintiff's complaint, he asks for "The appointment of an attorney of [his] choice, at government expense, to represent [him] in this matter." I construe this request as a motion for appointment of counsel. In deciding whether to appoint counsel, I must first find that plaintiff has made reasonable efforts to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff does not say that he has been prevented from trying to find a lawyer on his own. To prove that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers that he asked to represent him in this case and who turned him down.

Plaintiff should be aware that even if he is unsuccessful in finding a lawyer on his own, that does not mean that one will be appointed for him. At that point, the court must consider "whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself."

Pruitt v. Mote, 503 F.3d 647, 655 (7th Cir. 2007). This case is simply too new to allow the court to evaluate plaintiff's abilities or the likely outcome of the lawsuit. Therefore, the motion will be denied without prejudice to plaintiff's renewing his request at a later time.

## ORDER

IT IS ORDERED that:

1. Plaintiff Dennis Richardson is GRANTED leave to proceed on his claim that defendants Dr. Elliott and Jodine Deppisch violated his rights under the Eighth Amendment when they refused to provide him with any treatment for his serious post-traumatic stress disorder. In addition, plaintiff is GRANTED leave to proceed on his claim that defendant Rick Raemisch approved a policy to refuse treatment to prisoners who suffer from post-traumatic stress disorder.

2. Plaintiff's motion for appointment of counsel is DENIED without prejudice.

3. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not



have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's amended complaint and this order are being sent today to the Attorney General for service on the state defendants.

Entered this 30<sup>th</sup> day of May, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge