

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

CLAUDE LOWERY,

Petitioner,

v.

THOMAS RUBENZER,

Respondent.

ORDER

08-cv-479-slc¹

Petitioner Claude Lowery, a patient at the Sandridge Secure Treatment Center in Mauston, Wisconsin, seeks leave to proceed in forma pauperis in this proposed civil rights action brought under 42 U.S.C. § 1983. In a previous order, Magistrate Judge Stephen Crocker concluded that petitioner had the means to pay a small portion of the full filing fee, which the court has received.

In addressing any pro se litigant's complaint, the court must construe the complaint

¹Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the sole purpose of issuing this order, I am assuming jurisdiction over the case.

liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, when a party is proceeding in forma pauperis, the court must screen the complaint to determine whether it must be dismissed because the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §1915(e)(2). Having reviewed petitioner's complaint, I conclude that he has failed to state a claim upon which relief may be granted.

The allegations in petitioner's complaint consist of one sentence: "I have been denied the opportunity to work the same amount of hours as the same situated patients." Some context for this allegation is provided in an attachment to the complaint, an administrative decision by "a client rights facilitator" in response to a grievance petitioner filed at the facility. Centers v. Centennial Mortgage, Inc., 398 F.3d 930, 933 (7th Cir. 2005) (documents attached to complaint may be considered as part of allegations). In the decision, the facilitator summarizes petitioner's grievance as follows: petitioner was restricted to light duty work for approximately two weeks in November 2007; during that time petitioner was "supposed to be given nine hours of work but . . . only received three" because no other light duty work was available; petitioner was "not allowed to make up the hours . . . that [he] missed while on light duty."

Petitioner's complaint fails to state a claim for several reasons. First, petitioner fails to explain how respondent Thomas Rubenzer was involved in any decision to limit

petitioner's hours. Without such allegations, petitioner has failed to give respondent notice of his claim as required by Fed. R. Civ. P. 8. EEOC v. Concentra Health Services, Inc., 469 F.3d 773, 776 (7th Cir. 2007) (“[T]he complaint must describe the claim in sufficient detail to give *the defendant* fair notice of what the . . . claim is and the grounds upon which it rests.”) (emphasis added and internal quotations omitted). Second, although having a job at the facility may be beneficial to petitioner's rehabilitation, he has no constitutional right to work a certain number of hours. Petitioner suggests that he is being treated differently from other similarly situated patients, but neither his complaint nor the attachment provides a basis from which I could reasonably infer any differential treatment.

Even if I assume that petitioner received less favorable treatment than other patients, that would not necessarily mean that petitioner's rights were violated. Normally, different treatment is permissible so long as there is a rational basis for it. City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 440 (1985). Under Fed. R. Civ. P. 8, a plaintiff does not need to prove his claim in his complaint but he does need to provide “a short and plain statement of the claim showing that [he] is entitled to relief.” In the context of an equal protection claim governed by rational basis review, this means that “a plaintiff must allege facts sufficient to overcome the presumption of rationality that applies to government classifications.” St. John's United Church of Christ v. City of Chicago, 502 F.3d 616, 639 (7th Cir. 2007) (quoting Wroblewski v. City of Washburn, 965 F.2d 452, 460 (7th Cir.

1992)). In this case, it is certainly rational to limit a patient's work hours when there is no other work to be had within his abilities. Petitioner's allegations do not undermine this basic logic.

ORDER

IT IS ORDERED that this case is dismissed for petitioner Claude Lowery's failure to state a claim upon which relief may be granted. The clerk of court is directed to enter judgment in favor of respondent Thomas Rubenzer and close this case.

Entered this 4th day of November, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge