IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

SHAUN MATZ, OPINION ORDER

Plaintiff,

10-cv-774-slc

v.

JEFF HEISE,
WISCONSIN RESOURCE CENTER ADMISSIONS TEAM,
JOHN AND JANE DOES 1-10,

Defendants.

- -

This is the fourth lawsuit that prisoner Shaun Matz has pursued in this court. Like the other three, this case involves allegations that prison officials are disregarding his serious mental illness. (Plaintiff is pursuing a lawsuit unrelated to his prison conditions in the Eastern District of Wisconsin. Matz v. Klotka, 08-cv-494-RTR (E.D. Wis.).)

In his first two lawsuits, Matz v. Frank, 09-cv-653-slc (W.D. Wis.), and Matz v. Frank, 08-cv-491-slc (W.D. Wis.), plaintiff alleged that various officials were housing him in conditions at the Waupun Correctional Institution that exacerbated his mental illness, failing to treat his mental illness adequately and failing to prevent him from committing various acts of serious self harm. After more than two years, those cases settled without a

decision on the merits. In the third lawsuit, Matz v. Vandenbrook, 10-cv-668-slc (W.D. Wis.), plaintiff alleges that officials at the Columbia Correctional Institution failed to respond reasonably to substantial risks that he would harm himself and punished him for acts that he could not control. In an order dated December 9, 2010, dkt. #13, I concluded that plaintiff's complaint in 10-cv-668-slc stated a claim upon which relief may be granted.

In this case, plaintiff's claim is a bit different from his other lawsuits. He contends that defendant Jeff Heise and other members of the "admissions team" for the Wisconsin Resource Center violated his rights under the Eighth Amendment by refusing to place him at the center. Plaintiff has paid the full filing fee, but the Prison Litigation Reform Act requires the court to screen the complaint of any prisoner suing a government official to determine whether it states a claim upon which relief may be granted. 28 U.S.C. § 1915A. Having reviewed the complaint, I conclude that plaintiff's chances of prevailing are slim. However, because he has alleged enough facts to state a claim upon which relief may be granted, I will allow him to proceed on this claim.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, plaintiff fairly alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Shaun Matz is a prisoner confined at the Wisconsin Resource Center. At the times relevant to this complaint, he was housed at the Waupun Correctional Institution, the Columbia Correctional Institution or the Green Bay Correctional Institutiton. Defendant Jeff Heise is the "head" of the "admissions team" at the Wisconsin Resource Center. The admissions team decides which prisoners may be housed at the center. The Wisconsin Resource Center "was built and designed to house inmates . . . who are mentally ill and are in need of specialized, individual treatment and those inmates who are behavioral problems and cannot maintain in a regular prison . . . setting."

Plaintiff is seriously mentally ill. He has diagnoses various mental illnesses, including major depression, explosive disorder, schizoaffective disorder and character disorder with borderline and antisocial features. Plaintiff has a "very long history of self harm and suicide attempts."

During the last four years, psychologists have referred plaintiff to the center "on more than" four occasions. In their referrals they stated that plaintiff was "in need of mental health treatment which cannot be provided in DOC and his mental health condition is deteriorating and a high priority transfer is requested." At the time of each referrals, plaintiff had recently attempted suicide and was still feeling suicidal.

Defendant Heise and the admissions team denied each of the referrals, although they

were aware of plaintiff's history of mental illness and suicide attempts. As reasons for the denial, the team stated that plaintiff had "failed and denied treatment 7 years prior to the referrals" and that plaintiff was "disruptive" the last time he had been housed at the center. As a result of the team's refusal to accept plaintiff at the center, his mental health "deteriorated further and [he] attempted suicide numerous times."

In September 2010, Heise and the admissions team accepted plaintiff into the center.

OPINION

To prevail on a claim for failure to provide adequate mental health care in violation of the Eighth Amendment, a plaintiff must prove that the defendants were "deliberately indifferent" to his mental health. Sanville v. McCaughtry, 266 F.3d 724, 734 (7th Cir. 2001); Antonelli v. Sheahan, 81 F.3d 1422, 1432 (7th Cir. 1996); Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983). The elements are the same as a claim for inadequate medical care:

(1) Did plaintiff need mental health treatment?

(2) Did defendants know that plaintiff needed treatment?

(3) Despite their awareness of the need, did defendants consciously disregard plaintiff's need by failing to take reasonable measures to provide the necessary treatment?

There is no question that plaintiff has adequately alleged the first two elements. He

says that he has diagnoses of several serious mental illnesses and that defendant Heise and the rest of admissions team at the Wisconsin Resource Center were aware of his mental health history and his needs.

The primary question for the purpose of screening is whether plaintiff has alleged facts from which it may be inferred that defendants disregarded his needs by failing to act reasonably. A challenge for plaintiff in making that showing is the limited nature of defendants' scope of authority in this case. This is not a case in which plaintiff is alleging that defendants had complete control over his mental health care and refused to provide any. They had control over one decision only: whether plaintiff would be housed at the Wisconsin Resource Center. Thus, defendants cannot be held liable for the lack of care that plaintiff was receiving while he was housed at other institutions.

Generally, prisoners do not have a right to be housed at a particular facility. Dale v. Poston, 548 F.3d 563, 570 (7th Cir. 2008). However, plaintiff alleges in this case that prison psychologists recommended his placement at the center four times and that the Wisconsin Resource Center is the only facility in the state that can provide the treatment he needs. If there was no other institution in Wisconsin in which plaintiff could be housed in conditions that would comply with constitutional standards and defendants were aware of a substantial risk that plaintiff would not get adequate care outside the center, a refusal to allow plaintiff to be housed at the center could implicate the Eighth Amendment. It may

be very difficult for plaintiff to make such a showing, but I cannot say as a matter of law that he will be unable to do so.

A second challenge for plaintiff will be to show that defendants did not rely on legitimate factors in making their decisions. Even if plaintiff could get better care at the center than at other institutions, it would not necessarily violate the Eighth Amendment if defendants had reasonable concerns that plaintiff could not be housed safely at the center. Prison officials are not required to provide treatment to prisoners if doing so would jeopardize the safety or security of other prisoners or staff. Pearson v. Ramos, 237 F.3d 881 (7th Cir. 2001) (defendants did not violate Eighth Amendment by keeping inmate in disciplinary segregation for one year because he "behave[d] like a wild beast whenever he [was] let out of his cell"); Bruscino v. Carlson, 854 F.2d 162, 165 (7th Cir.1988) ("If order could be maintained in [the prison] without resort to the harsh methods attacked in this lawsuit, the plaintiffs would have a stronger argument that the methods were indeed cruel and unusual punishments.").

In this case, defendants told plaintiff that they were denying the referral because of problems plaintiff had at the center seven years earlier. If this is the true reason defendants denied the referral, plaintiff may not be able to prevail on this claim. He will have to do more than simply prove that defendants were mistaken in their belief; rather, he will have to show that the decisions were "such a substantial departure from accepted professional

judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment." Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261-62 (7th Cir. 1996). Again, however, plaintiff must be given an opportunity to make that showing.

Plaintiff wishes to sue all members of the admissions team, but defendant Heise is the only member he identifies by name. "[W]hen the substance of a pro se civil rights complaint indicates the existence of claims against individual officials not named in the caption of the complaint, the district court must provide the plaintiff with an opportunity to amend the complaint." Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir. 1996). Early in this lawsuit, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At the time of the conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the unnamed defendant or defendants and will set a deadline within which plaintiff is to amend his complaint to include the additional parties.

ORDER

IT IS ORDERED that

1. Plaintiff Shaun Matz is GRANTED leave to proceed on his claim that defendants Jeff Heise and John and Jane Does 1-10 denied him a placement at the Wisconsin Resource

Center, in violation of the Eighth Amendment.

2. 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 learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of documents.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for

defendants.

Entered this 21st day of December, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge