

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

MATTHEW STECHAUNER,

Plaintiff,

v.

RICK RAEMISCH, MICHAEL THURMER
and GARY ANKARLO,

Defendants.

OPINION and ORDER

10-cv-777-bbc

In this civil action for monetary and injunctive relief under 42 U.S.C. § 1983, plaintiff Matthew Stechauner is proceeding on claims that defendants Rick Raemisch, Michael Thurmer and Gary Ankarlo violated his rights under the Eighth Amendment by failing to provide him adequate mental health care at the Waupun Correctional Institution between March 2009 and September 2009. Now before the court is defendants' motion for summary judgment. Dkt. #27.

I conclude that defendants' motion must be granted. Plaintiff has the misfortune of suffering from serious mental disorders, but he has presented no evidence suggesting that defendant Dr. Ankarlo's treatment was unreasonable or a gross departure from ordinary care

under the circumstances. Additionally, plaintiff has presented no evidence that defendants Ankarlo, Thurmer or Raemisch disregarded a substantial risk of serious harm to plaintiff. Therefore, defendants are entitled to summary judgment in their favor. Fed. R. Civ. P. 56(a) (summary judgment must be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”).

Also before the court is plaintiff’s motion for appointment of counsel. Dkt. #43. Because I conclude that defendants are entitled to summary judgment, I will deny plaintiff’s motion as moot.

From the parties’ proposed findings of fact and the record, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

Plaintiff Matthew Stechauner has been incarcerated at the Waupun Correctional Institution since December 11, 2007. He has a long history of mental health issues and has received diagnoses of posttraumatic stress disorder, antisocial and borderline personality disorder, borderline intellectual functioning, attention deficit hyperactivity disorder and polysubstance abuse since being incarcerated at the Waupun Correctional Institution. He has engaged in acts of self harm many times since being incarcerated.

From April 15, 2007 to January 5, 2011, defendant Michael Thurmer was the warden

of the Waupun Correctional Institution. At all times relevant to this matter, defendant Rick Raemisch served as Secretary of the Wisconsin Department of Corrections. Defendants Thurmer and Raemisch are not medical doctors and are not qualified to provide direct medical or mental health services to inmates.

Inmates at the Waupun Correctional Institution receive mental health treatment from the prison's health services and psychological services units, which are part of the Department of Corrections Bureau of Correctional Health Services. The psychiatric team provides medication management for patient care and treatment. The psychological services team provides ongoing clinical care to patients, including individual therapy sessions, group sessions and various forms of non-medical interventions. The two teams confer on a regular basis about patient needs. Plaintiff is a patient of the psychological services and health services units. During the time period relevant to this lawsuit, Dr. Christopher Waser, a licensed psychologist, was plaintiff's primary treating psychologist. Dr. Todd Callister was plaintiff's primary treating psychiatrist.

During the time period relevant to this case, defendant Ankarlo was employed as a supervisor in the psychological services unit at the prison and was responsible for the overall administration of the psychological services unit. This included development, administration and coordination of all psychological programs within the unit, supervision and training of staff, provision of direct services, consultation and support activities.

Ankarlo did not exercise regular review of the courses of care that other licensed psychologists used with individual patients unless the psychologist was an unlicensed psychological associate. Ankarlo was available to consult with psychological staff to discuss cases and assist with treatment decisions and particular problems with an inmate's treatment.

If the psychological services staff believes that an inmate is at risk of harming himself, they can place the inmate on observation status, which means that the inmate is monitored at least every 15 minutes and may be placed in restraints. Inmates on observation status are evaluated by psychological services staff to determine whether the inmate has been stabilized. It was defendant Ankarlo's practice to review all clinical observation placements and initial reports of visits with inmates in observation status made by the psychological services team. Ankarlo usually saw these reports within a couple of days after they had been generated by the clinical team. He reviewed the reports to stay aware of the various mental health challenges being faced by the inmate population, particularly among those whose conditions were severe enough to require clinical observation status. If Ankarlo saw something in a report that alerted him to a problem or if he had a question or suggestion, he would discuss it directly with the clinical staff member whose report he had reviewed. Because Ankarlo had read and initialed these reports, he was aware that plaintiff had been placed on observation status multiple times and that plaintiff had various problems with

anger management and self-harming activities.

From approximately March through September 2009, plaintiff had difficulty coping with his mental health problems. He had multiple angry outbursts, expressed suicidal thoughts, had an inability to control his temper and engaged in self-harming activities such as head banging and cutting. On several occasions, he wrapped sheets or socks around his neck. On one occasion, plaintiff cut himself multiple times with a screw. (The parties dispute whether any of plaintiff's acts of self-harm resulted in "serious" or "significant" harm. Defendants say that plaintiff's actions indicated that he was "acting out" and attempting to manipulate staff, not that he intended to cause himself significant harm. Defendants say that plaintiff's cuts were superficial lacerations or minor cuts that could be treated with antibiotic ointment and that plaintiff's acts of tying materials "loosely" around his neck did not disrupt his breathing passages. Defendants admit that on one occasion, plaintiff created an abrasion on his head and bruised his hands from banging them against the wall. Plaintiff says that his acts of self-harm caused him to suffer whiplash, "redneck," concussions and cuts on his arms, legs and head.)

During the period from March to September 2009, plaintiff was placed in clinical observation status for his own safety on the following dates (usually after plaintiff expressed suicidal intentions or engaged in acts of self-harm): March 11 and 12; April 15 through 17; April 20 through 22; May 14 through 18; June 12 through 16; August 12 through 14;

September 6 and 7; September 14 and 15; and September 23 and 24. (Plaintiff was also placed on clinical observation on November 2 and 3; November 7 and 8; and November 16, 2009.) At various times during this period, he was prohibited from possessing sharp objects and bed linens. Defendant Ankarlo was not the responding clinician on any of those occasions and he did not make any of the decisions to release plaintiff from observation status after any of the events. On each occasion, Ankarlo reviewed plaintiff's placement after the fact.

In addition to the contacts he had with psychological services staff while he was on observation status, plaintiff had contact with staff from psychiatric and psychological services on several occasions during the period from March to September 2009. Specifically, plaintiff saw Dr. Callister for psychiatric appointments on the following dates between March and September 2009: March 12, April 16, May 14, May 21, June 18, July 16 and August 20. Dkt. #29-2. During the same period in 2009, plaintiff saw Dr. Waser or another member of the psychological services unit staff on the following dates for a "clinical contact": March 23, March 26, April 23, May 21, May 22, May 26, June 23, July 13, July 20, July 31, August 19, August 20, August 26 and September 3. Dkt. #29-1. During this period, Dr. Waser tried various treatment methods with plaintiff, including creation of a contract to refrain from self-harm and placement of plaintiff in the behavioral health unit, a treatment unit specially targeted for inmates with personality disorders and designed to

help disruptive inmates achieve general population status. Also, the psychological services team consulted with Dr. Callister regarding the team's care plans for plaintiff.

The parties dispute whether plaintiff wrote to defendants about his need for additional mental health care treatment in 2009. Plaintiff says that he wrote to all three defendants about need for additional mental health treatment and that they did not respond to his letters. Defendants say they never received any letters from plaintiff directly regarding his mental health treatment. Defendants Ankarlo and Thurmer admit that they were generally aware of plaintiff's mental health problems.

OPINION

A. Mental Health Treatment

Plaintiff was granted leave to proceed on his claims that defendants Gary Ankarlo, Michael Thurmer and Rick Raemisch violated his rights under the Eighth Amendment by failing to provide him adequate mental health treatment. The Eighth Amendment prohibits cruel and unusual punishment. A prisoner may establish a claim under the Eighth Amendment by showing that defendants disregarded a substantial risk of self-harm, which means that (1) defendants knew of a "substantial risk" that plaintiff would harm himself; and (2) disregarded that risk by failing to take reasonable measures to abate it. Farmer v. Brennan, 511 U.S. 825, 847 (1994); see also Minix v. Canarecci, 597 F.3d 824, 830-31 (7th

Cir. 2010) (acts of self-harm may present substantial risk to prisoner's safety); Cavaliere v. Shepard, 321 F.3d 616, 622-23 (7th Cir. 2003) (prison officials have duty to protect prisoners from harming themselves as result of mental illness).

Alternatively, a prisoner may establish a claim under the Eighth Amendment by showing that the defendants acted in deliberate indifference to a "serious medical need" of the prisoner's. Estelle v. Gamble, 429 U.S. 97, 104-06 (1976). A serious mental illness is considered a "serious medical need." Sanville v. McCaughtry, 266 F.3d 724, 734 (7th Cir. 2001).

Defendants do not deny the seriousness of plaintiff's mental health problems or the risk that he would harm himself. However, they contend that there is no evidence in the record that they were deliberately indifferent to plaintiff's mental health needs or to a substantial risk of serious harm to plaintiff.

"Deliberate indifference" means that defendants were aware that the prisoner needed treatment or protection and they knowingly or recklessly disregarded the risk to the prisoner's health or safety by failing to take reasonable measures to address it. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997); Farmer, 511 U.S. at 847. When the adequacy of an inmate's medical or mental health care is at issue, the deliberate indifference analysis requires the court to consider the totality of the care provided. Dunigan v. Winnebago County, 165 F. 3d 587, 591 (7th Cir. 1999). When a doctor has provided a prisoner some

treatment, the question is whether that treatment is constitutionally inadequate, that is, whether the doctor acted with such blatant inappropriateness so to imply that his actions or omissions were not actually based on medical judgment. Duckworth v. Ahmad, 532 F.3d 675, 679 (7th Cir. 2008). Unless medical care evidences “intentional mistreatment likely to seriously aggravate the prisoner’s condition,” a prisoner’s dissatisfaction with a doctor’s prescribed course of treatment does not give rise to a constitutional claim. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996).

1. Defendant Ankarlo

Plaintiff has provided the court no factual basis for finding that defendant Ankarlo’s mental health care was blatantly inappropriate. As an initial matter, Ankarlo was not plaintiff’s primary treating psychologist. As the supervisor of the psychology services unit at the Waupun Correctional Institution, Ankarlo could not evaluate every prisoner personally and had to rely on the diagnoses and judgments of prison psychologists and psychiatrists. In this case, Ankarlo relied on the judgment and treatment decisions of Dr. Waser and Dr. Callister. He cannot be held liable for inadequate treatment of which he played no role. Johnson v. Snyder, 444 F.3d 579, 586 (7th Cir. 2006) (affirming summary judgment for health administrator who relied on plaintiff’s medical record and doctor’s treatment decisions); Johnson v. Doughty, 433 F.3d 1001, 1015 (7th Cir. 2006) (affirming

directed verdict for health care administrator who responded appropriately to inmate's complaints of worsening symptoms and relied reasonably on doctor's professional opinions).

Additionally, defendant Ankarlo cannot be held liable under the Eighth Amendment on the basis of the letter that plaintiff allegedly wrote to Ankarlo. Plaintiff says he notified Ankarlo that he was receiving inadequate treatment, but plaintiff has adduced no facts specifying what he told Ankarlo. More important, plaintiff has adduced no evidence that he actually was receiving inadequate treatment. Although he contends that he should have received more frequent visits from psychological service staff and that psychological service staff did not do enough to help him control his mental illnesses and self-harming behavior, he points to no evidence in the record that could establish that defendant Ankarlo's failure to provide more frequent visits or instruct psychologists to use different methods of therapy was blatantly inappropriate, fell far below the general standard of care or resulted in plaintiff's suffering serious harm. Plaintiff's own say-so about what qualifies as appropriate mental health care is not enough.

The undisputed facts show that during the seven-month time period about which plaintiff is complaining, he was seen by his primary psychiatrist seven times and was seen for clinical contact visits by psychological services staff on 14 occasions. Additionally, when plaintiff engaged, or threatened to engage, in acts of self-harm, he was placed on clinical observation by the psychological services unit, during which time he was monitored closely

until psychological services staff believed he was no longer at risk of harming himself. Between March and September 2009, plaintiff was placed on observation status and sharps restrictions several times. Other than plaintiff's own broad assertions that his mental health needs are not being met at the Waupun Correctional Institution, he has produced no evidence that Ankarlo was treating plaintiff's needs improperly, that Ankarlo instructed other psychologists to mistreat plaintiff or that he otherwise recklessly disregarded any substantial risk of serious harm to plaintiff. Accordingly, defendants' motion for summary judgment on plaintiff's Eighth Amendment claim against Ankarlo will be granted.

2. Defendants Thurmer and Raemisch

A reasonable jury could not conclude that defendants Thurmer or Raemisch were deliberately indifferent to plaintiff's mental health needs or any substantial risk of serious harm to plaintiff. Plaintiff contends that because he informed these defendants that he was not receiving adequate mental health care at the Waupun Correctional Institution, they should have intervened on his behalf to insure that he was being adequately protected and cared for. However, plaintiff's claims against these defendants depend on his claim that he received inadequate mental health care treatment at the prison. Because plaintiff has adduced no evidence supporting his claim of inadequate mental health care, his claims against defendants Thurmer and Raemisch necessarily fail. Therefore, defendants' motion

for summary judgment will be granted with respect to plaintiff's claims against Thurmer and Raemisch.

ORDER

IT IS ORDERED that

1. The motion for summary judgment filed by defendants Gary Ankarlo, Rick Raemisch and Michael Thurmer, dkt. #27, is GRANTED.

2. Plaintiff Matthew Stechauner's motion for appointment of counsel, dkt. #43, is DENIED as moot.

3. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 5th day of January, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge