IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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SYLVESTER JACKSON,

OPINION and ORDER

Plaintiff,

11-cv-774-bbc

v.

RANDALL HEPP, GARY H. HAMBLIN,
TAMMY MAASSEN, KENNETH ADLER,
DEBRA TIDQUIST, CARLA GRIGGS,
GEORGIA KOSTOHRYZ, GREG MEIER,
CHERYL MARSOLEK, BETTY PETTERSON,
JODI DOUGHERTY and KEVIN CLARK,[1]

Defendants.

- -

Pro se plaintiff Sylvester Jackson is suing various officials at the Jackson Correctional Institution for their alleged failure to provide him adequate medical care, in violation of the Eighth Amendment. In particular, plaintiff alleges that defendants failed to treat his toes after surgery and failed to treat his back pain. Defendants' motion for summary judgment is ready for review. Dkt. #67. Because plaintiff has failed to show that a reasonable jury could find that any of the defendants violated his rights under the Eighth Amendment, I am granting defendants' motion in full.

[1] Plaintiff identified this defendant as "Sgt. Clark" in his complaint. I have amended the caption to reflect this defendant's full name as reflected in defendants' summary judgment materials.

From the parties' proposed findings of fact and the record, I find that the following facts are undisputed.

UNDISPUTED FACTS

At all times relevant to this case, plaintiff Sylvester Jackson was a prisoner at the Jackson Correctional Institution.

A. Post-Surgery Care for Plaintiff's Feet

On April 14, 2011, Paul Helstad, a doctor at a local hospital, removed both of plaintiff's big toenails. (The parties do not say in their proposed findings of fact why this occurred, but plaintiff alleged in his complaint that it was related to his diabetes. The parties agree that the procedure was necessary.) After the surgery, plaintiff's toes were flushed with alcohol, covered in ointment and wrapped in gauze.

Dr. Helstad provided a number of instructions and recommendations for postsurgery care. To defendant Kenneth Adler, a physician at the Jackson prison, he recommended Tylenol for pain control or Vicodin if necessary. To plaintiff, he provided written instructions, stating that he should soak his feet in lukewarm, soapy water for 5-10 minutes every day for the next four to six weeks or until the drainage ceases. Defendant Adler adopted these recommendations and instructions.

When plaintiff returned from the prison, he was not given a wheel chair to be pushed back to his unit. Instead, he was forced by "the officer" to walk a distance equal to about

2 1/2 blocks in his state-issued boots. This caused his wounds to bleed through his dressing and into his boots.

Nursing staff, including defendant Georgia Kostohryz and defendant Cheryl Marsolek, saw plaintiff for a foot soak and change of bandages on April 15, April 16 and April 19. The nurses saw no signs of infection. On April 19, Kostohryz and Marsolek instructed plaintiff to perform his own foot soaks in his unit. On April 23, staff in the health services unit performed another foot soak for plaintiff.

On April 25, 2011, plaintiff told defendant Debra Tidquist, a nurse practitioner at the Jackson prison, that his toes were doing well. Tidquist observed that plaintiff's toes were healing.

On May 2, 2011, plaintiff was placed in segregation. He told defendant Tidquist that he would need to be called to the health services unit for daily foot soaks. On May 3, 2011, defendant Marsolek saw plaintiff for a foot soak. She observed that his toes were healing and applied new ointment and bandages.

On May 4, 2011, plaintiff sent a health service request addressed to defendant Tidquist in which he complained that he had not been called to the health services unit for a foot soak that day. On May 5, 2011, defendant Kostohryz responded that there was "no further need to soak feet." The same day, plaintiff submitted another health service request in which he complained that he had not been called for a foot soak that day.

On May 6, 2011, defendant Carla Griggs, a registered nurse at the prison, saw plaintiff for a foot soak. She observed that there was no drainage on the bandages and the

nail beds were dry and well healed. The same day, defendant Adler determined that the foot soaks were no longer necessary and discontinued them.

On May 8, 2011, plaintiff stopped defendant Kostohryz during her rounds in segregation. He wanted to show her his feet, but she refused to ask staff to open plaintiff's cell door. Also on May 8, plaintiff submitted a health services request, in which he stated that his toes had "blood and clear pus building up, and they are sore to the touch. I'm having throbbing like pain in the right toe." On May 9, 2011, after reviewing plaintiff's medical file, defendant Betty Peterson, a registered nurse at the prison, responded that staff had observed plaintiff earlier that day walking fine and that defendant Adler had seen plaintiff on May 6 but had not noted any drainage.

Also on May 9, defendant Jodi Dougherty, an inmate complaint examiner, received and reviewed a grievance from plaintiff that medical staff were ignoring the hospital's post-surgery instructions for treating his toes. In her investigation of the grievance, Dougherty found that plaintiff had been seen on May 6 and staff had noted that the nail beds were dry and well healed and that Adler concluded that foot soaks were no longer needed. In her response, Dougherty directed plaintiff to the institution handbook, which states the orders from outside doctors are considered to be recommendations only and will not be implemented until reviewed by a doctor at the prison. Dougherty dismissed the grievance.

Plaintiff submitted another health service request the same day, complaining of drainage from his feet. The next day (May 10), the health services unit received the request and scheduled an appointment for the same day with defendant Griggs, who observed that

plaintiff walked with difficulty but was in no acute distress. An examination revealed that plaintiff's nail beds had "some minimal serous drainage" but otherwise appeared to be relatively unchanged since May 6. She instructed plaintiff to keep the area covered during the day. (The parties dispute whether defendant Adler was also present during the examination, but refused to look at plaintiff's feet.) Also on May 10, plaintiff wrote defendant Tammy Maassen, the health services unit manager, complaining about the lack of treatment for his toes. (The parties dispute whether plaintiff also wrote defendant Randall Hepp (the warden) on May 12, 2011, complaining about the same issues.)

On May 13, 2011, defendant Kevin Clark, a sergeant at the prison, came to plaintiff's cell with his diabetic meter. (The parties dispute whether plaintiff showed Clark his right foot, whether the foot was covered with "blood and greenish pus," whether plaintiff asked Clark to contact medical staff and whether Clark told plaintiff that he did not "give a shit.")

On May 14, 2011, defendant Marsolek saw plaintiff during segregation rounds. Plaintiff told her that his toenails had drainage and smelled foul. However, plaintiff refused to be seen by Marsolek. (Defendants say that plaintiff refused to be seen by anyone but defendant Tidquist. Plaintiff says that he wanted to see defendant Tidquist or defendant Adler.)

On May 16, 2011, plaintiff was seen by defendant Griggs, who observed that plaintiff's nail beds were dry, but there was some serous drainage to the cuticle area. After defendant Adler was notified, cultures were taken from the drainage and an appointment was scheduled with defendant Tidquist.

Also on May 16, defendant Dougherty received and reviewed two grievances from plaintiff. In the first, plaintiff complained that he had "been forced to wash the blood and pus looking greenish-yellow fluid from my feet in my cell sink" because medical staff was failing to provide treatment. Dougherty rejected the grievance on the ground that plaintiff was raising the same issues he had raised in a previous grievance. In the second grievance, plaintiff alleged that defendant Adler was refusing to treat his feet. Dougherty denied the grievance on the grounds that plaintiff could have followed the postoperative procedures on his own and that Dougherty was "not in the position to question the decisions of the medical professionals."

On May 17, 2011, defendant Hepp referred to defendant Maassen a letter in which plaintiff complained that his feet were infected and not being treated.

On May 18, 2011, Adler prescribed Bactrim DS for toe infection. The same day, plaintiff submitted a health service request in which he complained that his "joints between his legs are hurting from standing, washing my feet in the sink and that's because I have degenerated bones there." He requested a tub to soak his feet in. On May 20, defendant Griggs saw plaintiff. Because it was difficult to discern drainage from the bactrim ointment, Griggs consulted with defendant Tidquist over the telephone. Daily foot soaks were ordered for plaintiff.

On May 23, defendant Tidquist saw plaintiff for a followup on his toes. Plaintiff stated that he was feeling better and that the drainage had decreased. Tidquist observed that the toes were healing well and that there was no sign of infection. He ordered the foot

soaks to continue for one month.

In a letter dated May 25, 2011, plaintiff complained to Gary Hamblin (then-Secretary of the Wisconsin Department of Corrections) about various issues, including the handling of his grievances and the treatment for his toes. Hamblin forwarded the letter to the corrections complaint examiner's office.

Plaintiff did not receive another foot soak from prison staff until May 30, 2011. Defendant Marsolek observed no signs of infection. After that, plaintiff did not receive any additional foot soaks from staff.

B. Plaintiff's Back Pain

On December 4, 2009, a nurse at the prison saw plaintiff for complaints of pain in his back and the lower left side of his buttocks. Defendant Adler prescribed ibuprofen, after discussing plaintiff's condition with the nurse. In addition, plaintiff received "muscle rub," ice and authorization for an extra mattress.

On December 21, 2009, defendant Adler saw plaintiff again for complaints of hip pain. Adler ordered x-rays of both hips and prescribed 500 milligrams of naproxen twice a day for six months. After reviewing the x-rays, Adler concluded that plaintiff had mild degenerative disease of the right hip without fracture or dislocation.

On March 24, 2010, a nurse saw plaintiff for complaints of pain in his back and right buttocks. Plaintiff told her that his pain was worsening, that the prescribed muscle rub and ibuprofen were not effective and that he had soiled himself because his back pain made it

difficult for him to reach the toilet in time.

On March 25, 2010, defendant Adler saw plaintiff for a followup. Plaintiff told Adler that it was so painful to get up from bed that he had urinated on himself three times before making it to the toilet. After an examination, Adler's assessment was "hip/low back pain: at least partially related to" degenerative joint disease. Adler ordered physical therapy and prescribed ibuprofen for the pain. (The parties dispute whether plaintiff asked for an x-ray.)

On April 22, 2010, plaintiff had an appointment with a physical therapist, who concluded that plaintiff was suffering from "muscle imbalance, lack of flexibility and poor abdominal muscles." The physical therapist gave plaintiff exercises to address these issues.

On April 23, 2010, plaintiff was scheduled for a followup appointment with defendant Adler, but plaintiff did not report for the appointment. On April 29, Adler concluded after an examination that plaintiff's symptoms had improved with physical therapy and his gait was within normal limits. (The parties dispute whether plaintiff made another request for an x-ray.)

On October 22, 2010, Adler saw plaintiff again for low back pain, among other health concerns. Plaintiff told Adler that he lifted weights, performed calisthenics and walked. Adler found that plaintiff was not in acute distress, his back was "non-tender" and his gait was within normal limits, but that he was slow to rise from the chair. (The parties dispute whether plaintiff made another request for an x-ray and whether plaintiff told Adler that his low back pain was responding to the ibuprofen.)

On November 11, 2010, defendant Kostohryz saw plaintiff for back pain. She

observed that his gait was "guarded and slow," but there was no swelling or redness. She instructed plaintiff to alternate ice and heat, to lie down with his knees bent and take the ibuprofen as prescribed.

On December 3, 2010, defendant Tidquist saw plaintiff for low back pain, among other things. Tidquist ordered a lumbar/sacral spine x-ray.

On December 6, 2010, plaintiff requested renewal of his medical restriction for an extra mattress. It was renewed for three months.

On December 8, 2010, defendant Adler took x-rays of plaintiff's spine. They showed degenerative changes at L5-S1, but the remainder of the lumbar spine was unremarkable, disc spaces were maintained and alignment was normal. On December 10, defendant Tidquist told plaintiff that he had a mild case of degenerative disc disease. Without additional "indications," Tidquist determined that plaintiff did not require additional treatment.

On March 13, 2011, plaintiff submitted a health service request for back pain. He wrote that he had "severe" back pain, which becomes "unbearable" when he sneezes, gets out of bed, dresses himself or sits for a long period. On March 14, 2011 plaintiff had an appointment with defendant Tidquist. (The parties do not include any proposed findings of fact about Tidquist's response to plaintiff's complaints.)

On March 29, 2011, plaintiff submitted a health service request directed to defendant Tidquist in which he asked for an appointment with a physical therapist. In response, defendant Kostohryz wrote that he had an appointment scheduled for April 1, 2011. (The

parties do not say in their proposed findings of fact whether the appointment took place or, if it did, what occurred there.)

On April 5, 2011, plaintiff saw defendant Kostohryz for back pain. She scheduled an appointment with defendant Tidquist. On April 8, 2011, defendant Tidquist saw plaintiff for back pain, among other things. (The parties do not include any proposed findings of fact about Tidquist's response to plaintiff's complaint of back pain. The parties dispute whether plaintiff sent defendant Maassen letters on April 21, 2011, and May 3, 2011, in which plaintiff complained about a lack of care for his back pain.)

On May 1, 2011, plaintiff submitted a health service request in which he complained that his medical restriction for an extra mattress had been discontinued. In response, defendant Griggs wrote: "The policy has changed since all the old mattresses are replaced. Per policy there are not any double." On May 2, 2011, plaintiff submitted a health service request directed to defendant Tidquist in which he wrote that the "flat mattress" was causing him back pain. In response, a nurse wrote that the health services unit "does not issue extra mattress[es]." (The parties dispute whether plaintiff wrote to defendant Maassen on May 3, 2011, and May 5, 2011, asking her for a better mattress.)

On May 18, 2011, plaintiff submitted a health service request in which he complained that Tylenol was not helping his back pain, among other things. In response, defendant Kostohryz wrote that plaintiff was scheduled for "a visit" tomorrow. (The parties do not say in their proposed findings of fact whether plaintiff had a medical appointment the following day and, if he did, what happened there.)

On May 30, 2011, plaintiff submitted a health service request in which he wrote that his legs gave way when he sneezed and he fell against the sink in his cell. He asked defendant Tidquist to recommend a referral to a back specialist. (The parties do not say whether Tidquist ever saw this request.) On June 20, 2011, plaintiff sent another health services request in which he asked about a referral to a back specialist. In response, defendant Griggs noted that plaintiff had a medical appointment scheduled for July 1, 2011.

On July 3, 2011, plaintiff submitted a health service request in which he stated that he had not been called for his July 1 appointment and he was "still having back pain." A nurse responded that plaintiff's appointment had been rescheduled for July 4. (The parties do not say in their proposed findings of fact whether this appointment took place or, if it did, what happened at the appointment.)

On September 18, 2011, plaintiff submitted a health service request directed to defendant Tidquist in which he wrote that his "back is causing [him] a lot of pain" and that he needs "to be sent to a specialist." In response, a nurse noted that plaintiff was scheduled to be seen in the health services unit. (The parties do not say whether Tiqduist ever saw this request.) On September 29, 2011, plaintiff submitted a health service request in which he complained that his back was in "constant pain" and that he was having trouble sleeping since his double mattress restriction was removed. In response, defendant Kostohryz wrote that plaintiff could discuss these issues with "the NP" at his appointment "next week."

On October 5, 2011, plaintiff submitted a health service request in which he asked whether he was still scheduled to see defendant Tidquist for his back pain. In response,

defendant Griggs wrote "10/7/11." (The parties do not say in their proposed findings of fact whether plaintiff was seen on October 7 or, if he was, what happened at the appointment.)

On October 9, 2011, plaintiff submitted an information request to defendant Maassen in which he complained that his complaints of back pain were being ignored. In response, Maassen wrote that she did not "see any documentation in recent months" from plaintiff about back pain. On October 19, 2011, Maassen wrote plaintiff again, acknowledging that she had made an error. She informed plaintiff that he was scheduled to be seen by the nurse practitioner "after labs are done" and that Maassen would "have a nurse see [plaintiff] in the meantime."

On October 19, 2011, plaintiff was seen by nursing staff. Staff gave plaintiff heat treatment with a wet, warm towel to his midback. Staff recommended that plaintiff continue this twice a day for two weeks.

On October 30, 2011, plaintiff sent an information request addressed to defendant Maassen in which he asked when his laboratory tests would be taken and why he had to wait until then to be seen by the nurse practitioner. In response, defendant Griggs wrote that labs were scheduled for November 1, 2011, and an appointment with the nurse practitioner was scheduled for November 8, 2011.

On November 8, 2011, defendant Tidquist saw plaintiff for complaints of back pain. Tidquist ordered x-rays of plaintiff's thoracic, lumbar spine. The results of the x-ray showed "no fracture or bony destructive lesion of the lumbar spine and the vertebral bodies demonstrated normal height and alignment. L5-S1 showed mild osteoarthritis." Tidquist

Aff. ¶ 31, dkt. #73. Tidquist determined that additional treatment was not required.

After an appointment with plaintiff on November 28, 2011, defendant Adler prescribed Meloxicam and a physical therapy evaluation for plaintiff's back pain. (The parties dispute whether plaintiff asked Adler for a transcutaneous electrical nerve stimulation unit on June 22, 2012. Plaintiff's medical records indicate that he made this request to defendant Tidquist. Dkt. #97-3, exh. 87.)

On July 29, 2012, plaintiff submitted a health service request in which he complained about "strong pain surges in [his] lower back." He asked again to see a specialist. On September 10, 2012, defendant Adler ordered a TENS unit for plaintiff. (The parties dispute whether Adler had told plaintiff previously that he could not prescribe a TENS unit.)

OPINION

All of plaintiff's claims are governed by the Eighth Amendment, which prohibits cruel and unusual punishment. In the context of medical care, a prison official may violate this right if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). 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 "significantly affects an individual's daily activities," Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17

(7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials are aware that the prisoner needs medical treatment, but are disregarding 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 has three elements: (1) did plaintiff need medical treatment? (2) did defendants know that plaintiff needed treatment? and (3) despite their awareness of the need, did defendants consciously fail to take reasonable measures to provide the necessary treatment? On a motion for summary judgment, it is plaintiff's burden to come forward with evidence that would permit a reasonable jury to find in his favor on each of these elements. Henderson v. Sheahan, 196 F.3d 839, 848 (7th Cir. 1999).

A. Feet

I understand plaintiff to be raising the following claims about his treatment after the surgery on his toes: (1) he was not given a wheelchair when he first returned to the prison; (2) defendants Adler, Tidquist, Kostohryz, Griggs and Marsolek refused to provide daily foot soaks to plaintiff for four to six weeks, as instructed by the surgeon; (3) defendants Kostohryz and Clark refused plaintiff's requests for medical treatment (plaintiff made a similar allegation against defendant Greg Meier in his complaint, but he does not discuss Meier in his proposed findings of fact or develop an argument about Meier his brief); (4) defendant Peterson refused to schedule a medical appointment for plaintiff; and (5) defendants Hepp, Hamblin, Dougherty and Maassen refused to intervene when he

complained to them in letters and grievances.

For the purpose of their motion for summary judgment, defendants do not deny that plaintiff had a serious medical need after his surgery. Rather, the question is whether they consciously refused to take reasonable measures to provide treatment.

Plaintiff's first claim fails for an obvious reason: he has not adduced any evidence that one of the defendants required him to walk after surgery. In his proposed findings of fact and declaration, plaintiff says only that an unnamed "officer" refused to transport him to his cell in a wheelchair. Dkt. #96 at ¶ 69; dkt. #97 at ¶ 28. Because a defendant cannot be held liable for a constitutional violation without evidence that he or she was personally involved in the alleged conduct, Kuhn v. Goodlow, 678 F.3d 552, 555-56 (7th Cir. 2012), the complaint must be dismissed as to this claim.

In support of his claim about foot soaks, plaintiff cites cases such as Gil v. Reed, 381 F.3d 649 (7th Cir. 2004), for the proposition that the failure to follow the instructions of a specialist can violate the Eighth Amendment. However, an important difference between this case and Gil is that the specialist provided the instructions regarding foot soaks to *plaintiff* to carry out on his own. Plaintiff admits that he performed his own foot soaks when staff did not. He cites no authority to support a view that the Constitution requires prison officials to provide assistance to a prisoner that he can provide himself.

Plaintiff does not allege that he ever went without a foot soak when he wanted one. He wrote in a health service request that he had to wash his feet in the sink while he was housed in segregation and that doing so was hurting the "joints between [his] legs," but he

did not include a claim on this issue in his complaint and he has not adduced any evidence to support it.

With respect to defendants Kostohryz and Clark, plaintiff alleges that he asked them for medical assistance for his feet when they were passing by his cell, but they refused to help him. Even if I assume that plaintiff's allegations are true, he cannot prevail on these claims. As plaintiff was well aware, if a prisoner believes that he needs medical assistance, he may submit a health service request in which he explains his problem and asks for a medical appointment. Both before and after the alleged incidents with Kostohryz and Clark, plaintiff used health service requests to be seen by medical staff many times for concerns about his feet. Although that process would not be appropriate to handle an emergency, plaintiff has not adduced any evidence that he needed immediate care. In fact, it is undisputed that plaintiff *refused* to be treated by defendant Marsolek a day after the alleged incident with Clark, so it would be difficult for him to argue that he could not wait.

With respect to defendant Peterson, it is undisputed that she received a health service request from plaintiff on May 9, but she declined to schedule an appointment because plaintiff had just been seen on May 6 and no problems had been noted. This was not necessarily the best course of action because it did not account for the possibility that plaintiff's situation had changed over the course of three days. However, even I assume that Peterson should have scheduled an appointment, plaintiff has not adduced any evidence that Peterson's decision was so obviously wrong that "no minimally competent professional would have so responded under those circumstances." Collignon v. Milwaukee County, 163

F.3d 982, 988 (7th Cir. 1998). In any event, plaintiff was seen by health care staff one day later on May 10 and he has adduced no evidence that his situation was so urgent that he could not wait one day for treatment.

This leaves plaintiff's claims that defendants Hepp, Hamblin, Dougherty and Maassen refused to intervene when he complained to them in letters and grievances. Generally, "non-medical officials are entitled to defer to the professional judgment of the facility's medical officials on questions of prisoners' medical care." Hayes v. Snyder, 546 F.3d 516, 527 (7th Cir. 2008). Particularly because I have concluded that plaintiff has failed to show that medical staff violated the Eighth Amendment, it follows that administrators like Hepp, Hamblin, Dougherty and Maassen cannot be held liable for failing to direct medical staff to provide additional treatment.

B. Back

Plaintiff devotes fewer than four of the 40 pages in his brief to developing an argument in support of his claim regarding back pain. I understand him to be contending that defendants Adler and Tidquist violated his Eighth Amendment rights by refusing to provide adequate treatment for his back pain and that defendants Maassen, Hepp and Hamblin refused to intervene when plaintiff complained about Adler's and Tidquist's conduct. (Although other defendants were involved in decisions about treatment for plaintiff's back pain, plaintiff did not include them on this claim.) In particular, plaintiff seems to believe that defendants violated his rights by refusing to order x-rays sooner,

refusing to refer him to a specialist and refusing to order an extra mattress. (In his proposed findings of fact, plaintiff alleges that some of the defendants denied a request to be placed in a special cell for prisoners with disabilities, dkt. #96 at ¶¶ 57, 60, but that issue is outside the scope of this lawsuit.) Again, defendants do not deny that plaintiff's back pain was a serious medical need, so I do not consider that issue.

When plaintiff first complained to defendant Adler about back pain, Adler provided prompt treatment by ordering physical therapy and prescribing pain medication. Although Adler did not order an x-ray right away, the Eighth Amendment does not entitle a prisoner to the medical treatment of his choice. Ray v. Wexford Health Sources, Inc., 706 F.3d 864, 866 (7th Cir. 2013). See also Estelle v. Gamble, 429 U.S. 97, 107 (1976) ("But the question whether an x-ray or additional diagnostic techniques or forms of treatment is indicated is a classic example of a matter for medical judgment. A medical decision not to order an x-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice, and as such the proper forum is the state court."). Initially, there were indications that more aggressive treatment was not required. Adler observed that physical therapy was helping and plaintiff was able to remain active by lifting weights and performing calisthenics.

When plaintiff continued to complain of back pain, defendant Tidquist ordered x-rays, but both times the x-ray showed only a mild condition. Plaintiff has not shown that Tidquist's determination at the time that additional treatment was not required was "such a substantial departure from accepted professional judgment, practice, or standards as to

demonstrate that [Tidquist] did not base the decision on such a judgment." King v. Kramer, 680 F.3d 1013, 1018 (7th Cir. 2012).

The same is true for defendants' alleged failure to refer him to a specialist. Plaintiff cites Greeno v. Daley, 414 F.3d 645 (7th Cir. 2005), for the proposition that a refusal to refer a prisoner to a specialist can violate the Eighth Amendment, but that case is readily distinguishable. The plaintiff had been suffering from severe heartburn and vomiting for two years, but the defendant refused to authorize an endoscopy or send the plaintiff to a specialist, even though the defendant had noted the possibility of an ulcer. Id. at 655. In this case, neither defendants nor plaintiff has identified a potential benefit of sending plaintiff to a specialist. Further, defendants in this case continued to try different forms of treatment. Rather than send plaintiff to a specialist, defendant Adler chose to try a new pain medication and then a TENS unit. Although defendants certainly could have taken more or different measures to treat plaintiff's pain, that is not the test. Jackson v. Kotter, 541 F.3d 688, 697-98 (7th Cir. 2008) ("There is not one 'proper' way to practice medicine in a prison, but rather a range of acceptable courses based on prevailing standards in the field."); Walker v. Peters, 233 F.3d 494, 499 (7th Cir. 2000) ("We do not consider what a reasonable doctor would have done."). Because plaintiff has not shown that defendants' actions were "blatantly inappropriate," Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir.1996) (internal quotations omitted), plaintiff cannot prevail on his claim.

With respect to the extra mattress, plaintiff has not adduced evidence that most of the defendants on this claim even knew that his extra mattress had been removed, much less

that they had anything to do with the decision to take it away. Although the parties say little in their proposed findings of fact about the reason for the change, a response to one of plaintiff's health service requests suggests that the prison had replaced its mattresses and was no longer allowing prisoners to use more than one. The parties do not identify the official or officials responsible for that decision. Regardless, the only defendant named on this claim that plaintiff says he complained to about his mattress is defendant Maassen. Even if I assume that Maassen had authority to give plaintiff an extra mattress and that she was aware that plaintiff wanted one (she denies receiving a complaint from plaintiff about this issue), plaintiff has not adduced any admissible evidence that an extra mattress was necessary or even helpful in addressing his back pain.

With respect to the administrators' failure to intervene, again, they cannot be held liable because they were entitled to rely on the judgment of the medical professionals. Hayes, 546 F.3d at 527.

I acknowledge that there was a period of time for which it is not clear what treatment plaintiff was receiving for his back pain. Between March 2011 and November 2011 plaintiff submitted numerous health service requests to which the consistent response was that plaintiff had a medical appointment in the near future, but in many cases the parties did not submit any proposed findings of fact about what occurred at these appointments, if they occurred at all. In other instances, plaintiff's requests went unanswered. Although the missing facts are troubling, it is ultimately plaintiff's burden on a motion for summary judgment to come forward with evidence that a reasonable jury could find that a particular

defendant violated his rights. Marion v. Radtke, 641 F.3d 874, 876-77 (7th Cir. 2011). As I explained to plaintiff in the order denying his motion for a preliminary injunction, it is not enough for him to show that he complained about a problem, he must identify a particular defendant's *response* to that complaint in order to evaluate whether that response may have violated the Eighth Amendment. Dkt. #52. Because plaintiff has not adduced evidence that a particular defendant refused to provide care between March 2011 and November 2011, he cannot rely on any lack of treatment during that time to support a claim under the Eighth Amendment.

It is not clear from plaintiff's proposed findings of fact or his brief whether he continues to suffer from back pain. If he does, then health care providers at the prison have a continuing obligation under the Eighth Amendment to take reasonable measures to provide effective care. If it becomes clear that a particular form of treatment is ineffective and staff refuse to make a change, plaintiff remains free to file a new lawsuit after exhausting his administrative remedies.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants Randall Hepp, Gary Hamblin, Tammy Massen, Kenneth Adler, Debra Tidquist, Carla Griggs, Georgia Kostohryz, Greg Meier, Cheryl Marsolek, Betty Peterson, Jodi Dougherty and Kevin Clark, dkt. #67, is GRANTED. The clerk of court is directed to enter judgment in favor of

defendants and close this case.

Entered this 17th day of June, 2013.

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