

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

JAMAR ALLEN,

Plaintiff,

v.

SGT. WILLIAM MEILLER and
NURSE JANE DOE,

Defendants.

ORDER

12-cv-094-slc

This is a prisoner civil rights action brought pursuant to 28 U.S.C. § 1983. Plaintiff Jamar Allen has been granted leave to proceed on his claim that defendants Sgt. William Meiller and an unknown nurse refused to provide him with medical care after he began choking on a piece of plastic fork that broke off while he was eating. Dkt. 9. Presently before the court is defendants' motion to dismiss the case summarily on the ground that plaintiff had not exhausted his administrative remedies at the time he filed his complaint. Dkt. 21.

The 1996 Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." The Court of Appeals for the Seventh Circuit has taken a strict approach to exhaustion, holding that district courts lack discretion to decide claims on the merits unless the exhaustion requirement has been satisfied. *Dixon v. Page*, 291 F.3d 485, 488 (7th Cir. 2002); *see also Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 535 (7th Cir. 1999). In *Ford v. Johnson*, 362 F.3d 395, 398 (7th Cir. 2004), the court held that even where the grievance process was completed two days after the prisoner filed his federal

lawsuit, the case had to be dismissed for failure to comply with § 1997e's exhaustion requirement. "Section 1997e(a) says that exhaustion must precede litigation." *Id.*

As *Ford* makes clear, defendants' motion must be granted. The alleged choking incident alleged in this case occurred on January 23, 2012; plaintiff filed his federal lawsuit on February 10, 2012. The documents submitted by both sides in connection with the instant motion show that, although plaintiff initiated the grievance process prior to filing his lawsuit by filing three separate inmate complaints about the incident, he did not receive a final decision on any of those complaints until *after* he filed suit. *See* Plt.'s Br. in Opp. to Mot. for Summ. Judg., dkt. 32, and attached exhibits; Aff. of Welcome Rose, dkt. 23, and attached exhibits. In other words, plaintiff jumped the gun. His case must be dismissed.

Accordingly, IT IS ORDERED that the motion of defendants for summary judgment, dkt. 21, is GRANTED on the ground that plaintiff failed to complete the administrative grievance process before he filed suit. The complaint is DISMISSED WITHOUT PREJUDICE. Plaintiff may refile his suit after he exhausts the administrative grievance process, which it appears he has already done. Plaintiff's motion to compel discovery, dkt. 33, is DENIED as moot.

Entered this 19th day of September, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge