

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

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JESSIE WILLIAMS,

Plaintiff,

v.

NURSE FRIEND,

Defendant.

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ORDER

12-cv-135-bbc

In this proposed civil action for monetary and declaratory relief, plaintiff Jessie Williams, a prisoner at the Waupun Correctional Institution in Waupun, Wisconsin, contends that defendant Nurse Friend violated his rights under the Eighth Amendment by failing to provide him adequate medical treatment when he choked on a piece of metal. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915. In a previous order, I concluded that plaintiff was unable to make an initial partial payment of the \$350 fee for filing his complaint and placed his complaint under advisement. Dkt. #6.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In

addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

After reviewing the complaint, I conclude that plaintiff may proceed on his claim that defendant exhibited deliberate indifference to his medical needs in violation of the Eighth Amendment.

In his complaint and the documents attached to it, plaintiff alleges the following facts:

#### ALLEGATIONS OF FACT

Plaintiff Jessie Williams is a prisoner at Waupun Correctional Institution. On January 14, 2008, plaintiff was in his room when he began choking on a piece of metal that was in his food. Defendant Friend came to his door with a light and told him to get on his bed and open his mouth. Defendant then said she would be right back but she never returned. Plaintiff had to stay in bed for two days because of the pain.

#### DISCUSSION

Plaintiff contends that defendant's failure to treat him while he was choking and her failure to return to check on him constitutes deliberate indifference to his medical needs in violation of the Eighth Amendment. Under the Eighth Amendment, prison officials have a duty to provide medical care to those being punished by incarceration. Snipes v. DeTella,

95 F.3d 586, 590 (7th Cir. 1996) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state an Eighth Amendment medical care claim, a prisoner must allege facts from which it can be inferred that he had a “serious medical need” and that prison officials were “deliberately indifferent” to this need. Estelle, 429 U.S. at 104; Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

A medical need may be serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering when treatment is withheld, Gutierrez, 111 F.3d at 1371-73, “significantly affects an individual's daily activities,” Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825, 847 (1994).

“Deliberate indifference” means that the officials were aware that the prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). Inadvertent error, negligence, gross negligence and ordinary malpractice are not cruel and unusual punishment within the meaning of the Eighth Amendment. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996); Snipes, 95 F.3d at 590-91. Thus, disagreement with a doctor’s medical judgment, incorrect diagnosis or improper treatment resulting from negligence is insufficient to state an Eighth Amendment claim. Gutierrez, 111 F.3d at 1374; Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261

(7th Cir. 1996). Instead, “deliberate indifference may be inferred [from] a medical professional's erroneous treatment decision only when the medical professional's decision is 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, 94 F.3d at 261-62.

Plaintiff’s allegations suggest that he had a serious medical need of which defendant was aware. If I construe plaintiff’s complaint liberally, it is possible to infer that defendant acted with deliberate indifference by failing to determine whether plaintiff had metal lodged in his throat and failing to offer any treatment. According to plaintiff, he remained in pain for two days following the incident. These allegations are enough at this stage for plaintiff to proceed on his Eighth Amendment claim against defendant. However, plaintiff should be aware that in order to prove his Eighth Amendment claim, it will not be enough to show that defendant made an incorrect diagnosis or gave plaintiff the wrong treatment. Instead, plaintiff will have to show that defendant failed to use medical judgment in his treatment of plaintiff.

## ORDER

IT IS ORDERED that

1. Plaintiff Jessie Williams is GRANTED leave to proceed on his claim that defendant Nurse Friend violated his rights under the Eighth Amendment by failing to provide him adequate medical treatment.

2. Under 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 state defendant. 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 on behalf of the state defendant.

3. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Plaintiff is obligated to pay the balance of his unpaid filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

Entered this 5<sup>th</sup> day of April, 2012.

BY THE COURT:

/s/

BARBARA CRABB  
District Judge