

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

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MICHAEL ANTHONY WRIGHT, SR.,

Plaintiff,

v.

DOCTOR BAYTON, DOCTOR HOFFIEZER  
and H.S.U. MANAGER B. DITTMAN,

Defendants.  
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OPINION AND ORDER

12-cv-870-bbc

Pro se plaintiff Michael Anthony Wright has filed a proposed complaint in which he alleges that prison officials at the Dodge Correctional Institution are refusing to provide treatment for his hepatitis C, in violation of the Eighth Amendment. In a previous order, dkt. #4, the magistrate judge directed plaintiff to make an initial partial payment of the filing fee, 28 U.S.C. § 1915(b)(1), which the court has received.

Because plaintiff is a prisoner, I must screen his complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. § 1915A. Having reviewed plaintiff's allegations, I conclude that he may proceed on his Eighth Amendment claim against each of the defendants.

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). Plaintiff fairly alleges the following facts in his complaint.

## ALLEGATIONS OF FACT

Plaintiff Michael Anthony Wright is a prisoner at the Dodge Correctional Institution in Waupun, Wisconsin. He has the hepatitis C virus. Although he began treatment before he was incarcerated, he stopped treatment because he could no longer afford it. (Plaintiff does not say how long he has had the disease, when he was diagnosed with it or when he started and stopped his treatment.)

After plaintiff was incarcerated in April 2012, he told defendant Bayton, a doctor at the prison, that he wanted to start treatment again. In response, Bayton said that “the decision whether Corrections will restart your previously interrupted hepatitis C treatment is a complex one and it will be a matter of months before that question is resolved.” Plaintiff then submitted a request to defendant Bayton’s supervisor, defendant Hoffiezer, who said that “we will not start hepatitis C treatment on you at this time. Having failed to complete your previous treatment in 2011 makes it much more difficult to treat your virus. You may be considered for new treatment in the future.” Plaintiff submitted a grievance to defendant B. Dittman, the health services unit manager, who denied the grievance.

On August 31, 2012, defendant Bayton told plaintiff that “the potential for referral for another attempt at treatment is greater than I had thought.” After a blood test, Bayton told plaintiff that his “white blood cells are low,” so Bayton was going to “postpone [plaintiff’s] next check up about hepatitis C for six months.”

## OPINION

I understand plaintiff to contend that defendants Bayton, Hoffiezer and Dittman violated his right to medical care under the Eighth Amendment by refusing to treat his hepatitis C. 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) Does plaintiff need medical treatment?
- (2) Do defendants know that plaintiff needs treatment?
- (3) Despite their awareness of the need, are defendants consciously failing to take reasonable measures to provide the necessary treatment?

Both the Supreme Court and the Court of Appeals for the Seventh Circuit have held

that a refusal to treat a prisoner's hepatitis C without a medical justification may violate the Eighth Amendment. Erickson v. Pardus, 551 U.S. 89 (2007); Roe v. Elyea, 631 F.3d 843, 862-63 (7th Cir. 2011). In this case plaintiff alleges that defendants denied him treatment initially because his previous treatment had been interrupted and then because his white blood cell count was too low. It is too early in the case to determine whether these reasons are adequate.

Courts have noted that successful treatment of hepatitis C may be more difficult if there was an interruption in previous treatment, e.g., Iseley v. Dragovich, 90 Fed. Appx. 577, 581 (3d Cir. 2004); DiChiara v. Wright, 2011 WL 1303919, \*2 (E.D.N.Y. 2011), and that a low white blood cell count can complicate some types of treatment because treatment can reduce the count even further, compromising the patient's ability to fight infections. Smith v. Dillman, 2011 WL 322828, \*2 (W.D. Va. 2011). However, the Court of Appeals for the Seventh Circuit has made it clear that prison officials must consider each prisoner's individual circumstances in determining whether to pursue treatment for a prisoner's hepatitis C. Roe, 631 F.3d at 862-63.

If defendants used their medical judgment in good faith to determine that the risks of treatment outweighed the potential benefits, then plaintiff cannot prevail on his claim. However, if defendants refused to provide treatment without considering plaintiff's particular circumstances or were relying on pretextual justifications simply to save costs, they may have violated the Eighth Amendment.

These are questions that cannot be resolved at the screening stage, but must wait for

a motion for summary judgment or trial. Accordingly, I will allow plaintiff to proceed on this claim. However, plaintiff should keep in mind that it will not be enough for him to show that he disagrees with defendants' conclusions or even that another doctor might come to a different conclusion about the appropriate treatment. Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006). Rather, plaintiff will have to show that any medical judgment by defendants was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his condition. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir.1996) (internal quotations omitted). See also King v. Kramer, 680 F.3d 1013, 1018 (7th Cir. 2012) ("A medical professional's deliberate indifference may be inferred 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.").

## ORDER

IT IS ORDERED that

1. Plaintiff Michael Anthony Wright is GRANTED leave to proceed on his claim that defendants Bayton, Hoffiezer and B. Dittman refused to provide treatment for his hepatitis C, in violation of the Eighth Amendment.

2. For the time being, 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.

5. Plaintiff is obligated to pay the unpaid balance of his filing fees 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 fees have been paid in full.

Entered this 18th day of January, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge