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

MARC G. CRAVEN,

Plaintiff,

v.

SHERIFF DAVID MAHONEY, CAPTAIN JEFFERY TUESCHER, CHIEF DEPUTY JEFF HOOK, LT. MARK TWOMBLY, SGT. THOMAS SANKEY, SGT. SIEREN, SGT. SIMPSON, and MHS JENNIFER,

Defendants.

OPINION AND ORDER

12-cv-524-wmc

Plaintiff Marc G. Craven alleges that various correctional officers and other employees at the Dane County Jail violated his Eighth Amendment rights by acting with deliberate indifference to his psychiatric needs and by failing to provide him adequate toilet paper and soap. Craven asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit Craven has provided the court, the court concluded that he is unable to prepay any fee for filing this lawsuit, although he may be required to pay a partial fee when funds exist pursuant to the Prisoner Litigation Reform Act ("PLRA"). 28 U.S.C. § 1915(b)(1). The next step is determining whether Craven's proposed action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. Because Craven meets this step as to certain defendants and certain claims, he will be allowed to proceed and defendants Sheriff Mahoney and MHS Jennifer required to respond.

ALLEGATIONS OF FACT

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). In his complaint, Craven alleges, and the court assumes for purposes of this screening order, the following facts:

- Plaintiff Mark Craven is currently an inmate at Waupan Correctional Institution, but for all dates relevant to the present complaint, Craven was incarcerated at the Dane County Jail.

- Defendant David Mahoney is the Sherriff of Dane County. Captain Jeffrey Tuescher, Chief Deputy Jeff Hook, Lt. Mark Twombly, Sgt. Thomas Sankey, Sgt. Sieren, and Sgt. Simpson are all correctional officers at the Dane County Jail. Defendant "MHS Jennifer" is the mental health supervisor at the Dane County Jail.

- Craven alleges that he suffers from post-traumatic stress disorder with auditory hallucinations.

- During his time at Dane County Jail, he was placed on "mental health A.C.," which only allowed him to talk to a mental health provider one time per week "at the bars, where others could overhear the conversation and for two to three minutes at a time. (Compl. (dkt. #1) 3.)

- Craven complains that the only question posed to him during these brief interactions was "are you suicidal or having suicidal thoughts." (*Id.*) Craven alleges that he was "scared to discuss" any suicidal thoughts because he would then be placed in a suicide smock. (*Id.*) Craven also alleges that he was placed in a suicide smock for five days to two weeks. Later in the complaint, Craven alleges that he was placed in a smock because "a deputy" assumed he was going to hurt himself. (*Id.* at 4.)

- Craven also alleges that he tried to discuss his depression with "MH Nancy," who is not named as a defendant, but was told that "[they're] not here to treat me." (*Id.*)

- Craven further alleges that while in "623 cell block," an observation area, jail officials provided only six squares of toilet paper and no soap, resulting in feces on his hands and (in-turn) in his food.

- Craven alleges that the named correctional officers were made aware of his concerns through the grievance process and failed to take any action, and/or that they are supervisors of individuals who could have taken corrective actions.

- Finally, Craven also alleges that Sherriff David Mahoney is "responsible for the wellbeing of all inmates in the Dane County Jail." (*Id.* at 5.)

OPINION

Craven seeks to bring claims against defendants for "deliberate indifference to mental health disease, mental health discrimination with physical punishment." (Compl. (dkt. #1) 4.) The court construes Craven's complaint to allege three Eighth Amendment violations: (1) inadequate treatment for his mental health issues; (2) inappropriate use of the suicide smock; and (3) inadequate supply of toilet paper and soap. While the court is able to discern these violations, the complaint provides little information linking these violations to the individual defendants. "To recover damages under § 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right." *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). Plaintiff's conclusory allegation that he "brought these issues to [the individual defendant's] attention thru the grievance system" does not satisfy the personal involvement requirement of a § 1983 claim. Still, the court will consider each of the alleged violations to determine whether Craven has made out a claim and, if so, against which defendants.

I. Deliberate Indifference to Mental Health Needs

The Eighth Amendment prohibits prison officials from showing deliberate indifference to prisoners' serious medical needs or suffering. *Estelle v. Gamble*, 429 U.S.

97, 103 (1976). The protections of the Eighth Amendment apply to the mental health needs of prisoners no less than their physical health needs. *See, e.g.*, *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987); *Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983). To state a deliberate indifference claim, a plaintiff must allege facts from which it may be inferred that he had a serious medical need and that prison officials were deliberately indifferent to that need. *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997).

"Serious medical needs" include (1) conditions that are life-threatening or that carry risk of permanent serious impairment if left untreated; (2) those in which the deliberately indifferent withholding of medical care results in needless pain and suffering; or (3) conditions that have been "diagnosed by a physician as mandating treatment." *Gutierrez*, 111 F.3d at 1371-73. A prison official has acted with deliberate indifference when the official "knew of a substantial risk of harm to the inmate and acted or failed to act in disregard of that risk." *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006) (citing *Walker v. Benjamin*, 293 F.3d 1030, 1037 (7th Cir. 2002)).

Here, Craven alleges that he suffers from "Post-Traumatic Stress Disorder" with "[a]uditory [h]allucinations" and "[d]epression," including suicidal ideations. These allegations are sufficient to constitute a serious medical need. Craven also alleges that he informed Dane County Mental Health Services of his mental health needs and was denied treatment, other than alleged inappropriate use of a suicide smock. More specifically, the complaint alleges that Mental Health Supervisor "Jennifer" (last name not provided) directed mental health services employees and was in charge of the

observation unit where Craven was detained. These allegations give rise to a reasonable inference that Jennifer directed Craven's mental health care or lack of it. Moreover, plaintiff's allegation that Sherriff Mahoney is responsible for the wellbeing of all Dane County inmates is sufficient to allege a claim against him in his official capacity for any policies restricting inmate access to mental health services. Accordingly, the court will allow Craven to go forward on his claims against defendant "MHS Jennifer" and Sherriff Mahoney for the alleged, systematic denial of requests for mental health treatment at the Dane County Jail in violation of his Eighth Amendment rights.

While Craven's allegations against defendants Jennifer and Mahoney pass muster under the court's lower standard for screening, he should be aware that to be *successful* on his claim, or even get past a motion for summary judgment, he will have to *prove* defendants' deliberate indifference, which is a high standard. Inadvertent error, negligence or gross negligence are insufficient grounds for invoking the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be Craven's burden to prove: (1) his medical conditions constituted serious medical needs, which may well require expert testimony rebutting medical evidence to the contrary; and (2) perhaps even more daunting, that the defendants knew his condition was serious and deliberately ignored his pain.

II. Inappropriate Use of Suicide Smock

Craven also complains about the use of a suicide smock. As far as the court can discern, Craven raises concerns about (1) the use of the smock when not warranted; (2)

the use of the smock as the sole treatment for his depression; and (3) the length of time Craven was kept in the smock. Assuming that a "suicide smock" (or "anti-suicide smock") is a generic garment, other courts have described it as "a tear-resistant garment held together with velcro." *Taylor v. Wausau Underwriters Ins. Co.*, 423 F. Supp. 2d 882, 885 (E.D. Wis. 2006); *see also Harriman v. Hancock Cnty.*, 627 F.3d 22, 26 n.5 (1st Cir. 2010) (describing an "anti-suicide smock" as a "stiff, tear-resistant gown worn in place of clothing to prevent a detainee from forming a noose or other device that could be used to commit suicide").

While a denial of adequate clothing can form the basis of an Eighth Amendment claim, the complaint does not contain sufficient allegations to determine whether the suicide smock failed to provide adequate coverage. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (holding that a prison official has a duty to "ensure that inmates receive adequate food, clothing, shelter, and medical care"). Even if the stiffness of the smock is uncomfortable, that would not be enough to constitute a violation of the Eighth Amendment. *Rice ex rel. Rice v. Correctional Med. Servs.*, 675 F.3d 650, 665 (7th Cir. 2012) ("Prison conditions may be harsh and uncomfortable without violating the Eighth Amendment's prohibition against cruel and unusual punishment." (internal citation and quotation marks omitted)).

In addition, Craven alleges that he was placed in the smock after voicing suicidal thoughts, or at least otherwise indicating threats of self-harm, and also apparently at times when he had repeatedly denied such thoughts and a corrections officer nevertheless assumed there was a suicide risk. Given that correctional facilities must treat inmates'

threats of self harm and suicide seriously or they open themselves up to liability, it seems unlikely that Craven could prevail on a deliberate indifference claim against an institution that took steps to protect the patient who has expressed such thoughts or not credibly denied them. *See Matos ex rel. Matos v. O'Sullivan*, 335 F. 3d 553, 557 (7th Cir. 2003) (analyzing deliberate indifference claim brought by estate of inmate who committed suicide in prison). In any event, any claims that Craven may have concerning the Dane County Jail's use of suicide smocks on these alleged facts would appear to fall within his deliberate indifference claim.[1]

III. Denial of Toilet Paper and Soap

Craven also complains about a lack of toilet paper and soap in the observation area of the jail. An Eighth Amendment conditions of confinement claim requires a sufficiently serious deprivation that "result[s] in the denial of 'the minimal civilized measure of life's necessities.'" *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). "Conditions, alone or in combination, that do not . . . fall below the contemporary standards of decency are not unconstitutional, and 'to the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against

[1] Even if the court could discern some viable, separate claim concerning the use of the suicide smock, Craven has failed to allege which defendants violated his rights by placing him in the smock.

society.'" *Caldwell v. Miller*, 790 F.2d 589, 601 (7th Cir. 1986) (quoting *Rhodes*, 452 U.S. at 347).

Despite this high bar, the Seventh Circuit has found that denial of toilet paper over an extended period of time, at least in combination with other allegations of decrepit conditions, may rise to the level of a constitutional violation. *See Vinning-El v. Long*, 482 F.3d 923, 924 (7th Cir. 2007) (concluding that deprivation of sheets, toilet paper, shoes, towels, soap, toothpaste, and other personal property for six days may violate Eighth Amendment); *Kimbrough v. O'Neil*, 523 F.2d 1057, 1058-59 (7th Cir. 1975) (holding that complaint alleging that pretrial detainee spent three days in cell without toilet, water, mattress, bedding, soap, toilet paper, or towels stated claim for unconstitutional conditions of confinement); *but see Harris v. Fleming*, 839 F.2d 1232, 1235 (7th Cir. 1988) (finding that an inmate's allegations that he was kept in a filthy, roach-infested cell without toilet paper for five days and without soap, toothpaste or a tooth brush for ten days did not "reach unconstitutional proportions").

Here, plaintiff alleges that he was limited to six squares of toilet paper -- without any information as to whether this was a per use, per day, or some other unit of time -- and that he was denied access to soap to wash his hands. These allegations appear to fall short of the kinds of extreme conditions that the Seventh Circuit has found to be unconstitutional in the past. Still, Craven alleges that he was unable to effectively remove feces from his hands and this resulted in the contamination of his food. This additional allegation, coupled with the fact that the court is allowing Craven to go forward with his deliberate indifference to medical treatment claim, arguably pushes the

allegations here within the realm of unconstitutional conditions. At least at the screening stage, the court will also infer from the complaint that jail policies governing access to toilet paper and soap would fall within the purview of defendant Mahoney in his official capacity.

ORDER

IT IS ORDERED that:

1) Plaintiff Marc G. Craven's request to proceed against defendants MHS Jennifer and Sheriff David Mahoney on an Eighth Amendment deliberate indifferent to mental health concerns is GRANTED.

2) Plaintiff's request to proceed on his Eighth Amendment conditions of confinement claim against defendant Mahoney is GRANTED.

3) The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon Dane County Sheriff David Mahoney. Summons will not issue for defendant MHS Jennifer until plaintiff discovers the full name of this party and amends his complaint accordingly.

4) Plaintiff's request to proceed against defendants Captain Jeffrey Tuescher, Chief Deputy Jeff Hook, Lt. Mark Twombly, Sgt. Thomas Sankey, Sgt. Sieren, and Sgt. Simpson is DENIED, and those defendants are DISMISSED.

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

6) 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.

7) Plaintiff is obligated to pay the balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 2nd day of October, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge