

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

SYLVESTER JACKSON,

Plaintiff,

v.

TAMMY MASSEN, DEBRA TIDQUIST,
KENNETH ADLER, GEORGIA KOSTOHRYZ,
JODI DOUGHERTY, GREG MEIER,
JANE DOE ONE, JANE DOE TWO,

Defendants.

OPINION AND ORDER

13-cv-662-bbc

Pro se prisoner Sylvester Jackson has filed a proposed complaint under 42 U.S.C. § 1983 in which he alleges that various prison officials at the Jackson Correctional Institution refused to give him insulin for his diabetes, in violation of the Eighth Amendment. In particular, he alleges that, on November 9, 2011, defendant Debra Tidquist (a nurse practitioner at the prison) discontinued his insulin prescription; defendant Kenneth Adler (a doctor at the prison) approved that decision; two unnamed staff members in the health service unit refused plaintiff's request for insulin a few days later; defendant Tammy Massen (the health services unit manager) failed to respond to a letter in which he wrote that the decision to discontinue his insulin was "putting him at risk"; defendant Greg Meier (a nurse at the prison) denied plaintiff's request for insulin and refused to provide any other treatment even after plaintiff told Meier that his blood sugar level was high; defendant Jodi

Dougherty (a complaint examiner) denied plaintiff's grievance about the denial of his insulin without conducting an adequate investigation; and defendant Georgia Kostohryz (a nurse at the prison) refused to give plaintiff insulin or provide any other medical treatment even after a test showed that his blood sugar level was "350 plus." Plaintiff alleges that defendants' actions placed him at "serious risk [of] kidney damage, nerve damage, heart attack, stroke, diabetic coma and death." He does not say whether or when he began receiving insulin again.

Plaintiff has made an initial partial payment of the filing fee as required by 28 U.S.C. § 1915(b)(1). Having screened the complaint in accordance with 28 U.S.C. § 1915A, I conclude that plaintiff may proceed on his claims against defendants Debra Tidquist, Kenneth Adler, Greg Meier and Georgia Kostohryz, but I am dismissing the complaint as to the remaining defendants for plaintiff's failure to state a claim upon which relief may be granted.

OPINION

A prison official may violate the Eighth Amendment 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?
- (3) Despite their awareness of the need, did defendants consciously fail to take reasonable measures to provide the necessary treatment?

I will infer from the allegations in plaintiff’s complaint that he needed insulin for treatment of his diabetes. This leaves the question whether each of the defendants knew that plaintiff needed treatment and consciously refused to provide it. With respect to defendants Tidquist and Adler, plaintiff does not identify any reason for their decision to discontinue his insulin, so I will assume at this stage that they did not have a medical basis for doing so. In addition, I will allow plaintiff to proceed against defendants Kostohryz and Meier. “[N]urses may generally defer to instructions given by physicians, but that deference may not be blind or unthinking, particularly if it is apparent that the physician's order will likely harm the patient. A nurse may therefore act with deliberate indifference if he or she ignores obvious risks to an inmate's health in following a physician's orders.” Holloway v.

Delaware County Sheriff, 700 F.3d 1063, 1075-76 (7th Cir. 2012)(internal quotations, citations and alterations omitted). In this case, plaintiff alleges that defendants Kostohryz and Meier refused to help him even though they knew his blood sugar levels were dangerously high, so I will infer at this stage that they were ignoring an obvious risk to plaintiff's health.

Plaintiff leaves out of his complaint many details that he will have to prove at summary judgment. For example, with respect to the question whether he had a serious medical need, he will have to prove that each defendant's actions caused him to suffer an adverse health consequence beyond his elevated blood sugar levels. In Jackson v. Pollion, No. 12-2682, — F.3d —, 2013 WL 5778991 (7th Cir. Oct. 28, 2013), the prisoner argued that officials violated his Eighth Amendment right to medical care by denying his high blood pressure medication for three weeks. The court of appeals concluded that the prisoner had to do more than show that he was denied medication for a serious condition: "No matter how serious a medical condition is, the sufferer from it cannot prove tortious misconduct (including misconduct constituting a constitutional tort) as a result of failure to treat the condition without providing evidence that the failure caused injury or a serious risk of injury. For there is no tort—common law, statutory, or constitutional—without an injury, actual or at least probabilistic." Id. at *3. Particularly if plaintiff began receiving insulin again after the incidents in this case, he will have to show that any delay caused him harm. Id.

With respect to the defendants' decisions to deny plaintiff's request for treatment, it will not be enough for plaintiff to show that he disagrees with defendants' conclusions

about the appropriate treatment for his diabetes, Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006), or even that defendants could have provided better treatment, Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008). 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).

I am not allowing plaintiff to proceed on a claim against the unnamed staff members, defendant Massen or defendant Dougherty. With respect to the unnamed staff members and defendant Massen, plaintiff does not allege that he told them his blood sugar levels were high or that they were otherwise aware of any reason to question the decision of defendants Tidquist and Adler to discontinue plaintiff’s insulin, so Massen and the unnamed staff members were entitled to rely on Tidquist’s and Adler’s judgment. Hayes v. Snyder, 546 F.3d 516, 526-28 (7th Cir. 2008) (“Because the non-medical defendants were entitled to rely on the professional judgment of medical prison officials, and because nothing . . . made it obvious that Hayes might not be receiving adequate care, the district court correctly granted summary judgment in favor of the non-medical defendants.”). With respect to defendant Dougherty, the court of appeals has held on multiple occasions that prison officials cannot be sued under § 1983 for the way they ruled on a grievance, McGee v. Adams, 721 F.3d 474, 485 (7th Cir. 2013); George v. Smith, 507 F.3d 605, 609 (7th Cir. 2007), which was Dougherty’s only alleged involvement in this case. Accordingly, I am dismissing plaintiff’s claims against defendants Massen, Dougherty and the unnamed defendants for his failure

to state a claim upon which relief may be granted.

ORDER

IT IS ORDERED that

1. Plaintiff Sylvester Jackson is GRANTED leave to proceed on his claims that (1) defendants Debra Tidquist and Kenneth Adler discontinued his insulin for treating his diabetes, in violation of the Eighth Amendment; and (2) defendants Greg Meier and Georgia Kostohryz refused to provide any treatment to plaintiff when his blood sugar levels were dangerously high, in violation of the Eighth Amendment.

2. Plaintiff is DENIED leave to proceed on his claims against defendants Jane Doe One, Jane Doe 2, Tammy Massen and Jodi Dougherty for his failure to state a claim upon which relief may be granted. The complaint is DISMISSED as to those defendants.

3. 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.

4. 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 his documents.

5. 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 defendants. Plaintiff should not attempt to serve defendants on his own at this time. 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 their 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 accounts until the filing fee has been paid in full.

Entered this 8th day of November, 2013.

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