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

ROGER DALE GODWIN,

Plaintiff,

v.

JOLIEN WATERMAN, *et al*.,

Defendants.

OPINION AND ORDER

13-cv-174-wmc

State inmate Roger Dale Godwin has filed this complaint under 42 U.S.C. § 1983, against an assortment of state prison officers and officials concerning the conditions of his confinement in the Wisconsin Department of Corrections ("WDOC"). Godwin seeks leave to proceed without prepayment of fees and costs. For reasons set forth briefly below, Godwin is denied leave to proceed *in forma pauperis* because he (1) is barred by the three-strikes rule found in 28 U.S.C. § 1915(g); and (2) has failed to plead facts supporting a finding of imminent danger.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations generously. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court accepts plaintiff's well-pleaded allegations as true and assumes the following probative facts.

At all times relevant to the complaint, Godwin has been held at the Wisconsin Secure Program Facility ("WSPF") in Boscobel. The following defendants are employed

as administrators, health care providers, or security officers at WSPF: Jolien Waterman; Mary Miller; Grievance Investigator Ellen Ray; Grievance Investigator Kelly Trumm; Warden Tim Haines; Bureau of Health Services Director David Burnett; Dr. Buron Cox; Lieutenant Dane Esser; and Officer Brian Kool. Godwin also names as defendants Wisconsin Governor Scott Walker, Attorney General J.B. Van Hollen and Assistant Attorney General Troy Herman of the Wisconsin Department of Justice.

Upon his arrival at WSPF on June 4, 2012, Waterman, Miller and Cox reportedly confiscated Godwin's "blood thinners," vitamins and skin creams "for no reason." Godwin appears to allege that he required these items to treat "chronic pain." Dr. Cox reportedly refused to explain why he ordered certain lab tests and discontinued an unspecified prescription in favor of Ibuprofen for pain. Godwin contends that Ibuprofen has not worked to control his pain and has resulted in gastrointestinal distress, vomiting, and bloody stool. Although Godwin has been examined at the University of Wisconsin Hospital in Madison, he appears to claim that a return visit has been delayed for as much as four months. Unspecified defendants have also failed to provide him with adequate medical care for nine months. Finally, Godwin complains that two correctional officers at WSPF harassed him and searched his cell on November 4, 2012.

Godwin has filed formal grievances and written to supervisory officials at WSPF, WDOC, and the Wisconsin Department of Justice, but his requests for help reportedly have been "dismissed" or disregarded. He requests $250,000 in compensatory damages from each defendant and an "administrative transfer" to a hospital or out-of-state prison.

OPINION

Because Godwin is incarcerated, his case is governed by the Prison Litigation Reform Act of 1996 (the "PLRA"). The PLRA requires a court to screen each complaint and dismiss any portion that is 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 them. *See* 28 U.S.C. § 1915A. Unless an inmate demonstrates that he is in "imminent danger of serious physical injury," the PLRA further precludes an inmate from bringing a civil action or appealing a civil judgment *in forma pauperis* if at least three of the inmate's prior lawsuits have been dismissed as frivolous, malicious, or for failing to state a claim on which relief may be granted. 28 U.S.C. § 1915(g).

On at least three prior occasions, Godwin has filed complaints in this court that were dismissed as legally frivolous, malicious or failed to state a claim upon which relief may be granted. *Godwin v. Sutton*, 05-cv-493-bbc (W.D. Wis. Sept. 12, 2005); *Godwin v. Bridgewater*, 05-cv-bbc (W.D. Wis. Nov. 7, 2005); and *Godwin v. Frank*, 06-cv-489-bbc (W.D. Wis. Sept. 22, 2006). As a result, Godwin may proceed *in forma pauperis* only to the extent that his claims fit within the PLRA's imminent-danger exception.

To demonstrate an imminent danger for purposes of § 1915(g), an inmate must articulate specific facts showing that a "threat" or risk of physical harm is both "real and proximate." *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003). Courts have uniformly held that the imminent-danger exception requires the risk of serious physical injury to exist at the time the complaint is filed. *Id.*; *see also, e.g., Malik v. McGinnis*, 293 F.3d 559, 563 (2d Cir. 2002) ("[I]t is clear from the face of the statute that the danger

must exist at the time the complaint is filed."); *Abdul–Akbar v. McKelvie*, 239 F.3d 307, 313 (3d Cir. 2001) (en banc) (finding that the use of the present tense in § 1915(g)'s imminent danger exception indicates that "[t]he statute contemplates that the 'imminent danger' will exist contemporaneously with the bringing of the action"); *Medberry v. Butler,* 185 F.3d 1189, 1193 (11th Cir. 1999) ("Congress' use of the present tense in § 1915(g) confirms that a prisoner's allegation that he faced imminent danger sometime in the past is an insufficient basis to allow him to proceed *in forma pauperis* pursuant to the imminent danger exception to the statute."). Thus, allegations of past harm, or allegations of a past injury that has not recurred, do not fit within the imminent-danger exception for purposes of proceeding *in forma pauperis*. *See Ciarpaglini*, 352 F.3d at 330 (citing *Abdul-Wadood v. Nathan*, 91 F.3d 1023 (7th Cir. 1996)).

Reviewed generously, Godwin's claims concerning the confiscation of blood thinner medicine, vitamins and skin cream on June 4, 2012, and harassment by security officers on November 4, 2012, are remote in time and do not demonstrate an imminent danger of harm. *See Ciarpaglini*, 352 F.3d at 330; *see also Heimermann v. Litscher*, 337 F.3d 781 (7th Cir. 2003).

Although Godwin's contention that he has been denied adequate medical care for the past nine months presents a closer question, it, too, falls short. While the Eighth Amendment imposes a duty on prison officials "'to provide medical care for those whom it is punishing by incarceration,'" *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996) (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)), prison officials violate the Eighth Amendment only if they are "deliberately indifferent" to a prisoner's "serious medical

needs." *Arnett v. Webster*, 658 F.3d 742, 750 (7th Cir. 2011) (citing *Estelle*, 429 U.S. at 104). The disjointed pleadings in this case do not include enough facts to determine if an Eighth Amendment violation has occurred at all, much less that any denial of medical care has placed Godwin in imminent danger of serious physical harm. *See Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009) (noting that a court need not accept as true "abstract recitations of the elements" and "conclusory legal statements" when reviewing the sufficiency of a *pro se* plaintiff's allegations under Fed. R. Civ. P. 8). More detail is typically required to satisfy the imminent-danger exception. *See Ciarpaglini*, 352 F.3d at 330; *see also Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003) (requiring an inmate to make "specific fact allegations of ongoing serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury").

Other than alluding to chronic pain and gastrointestinal distress, Godwin provides no specific facts about his medical needs, nor which defendants were acting with deliberate indifference to them. *See Chavez v. Illinois State Police*, 251 F.3d 612, 651 (7th Cir. 2001) (quoting *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995)); *see also Black v. Lane*, 22 F.3d 1395, 1401 (7th Cir. 1994) ("[A]n official meets the 'personal involvement' requirement when 'she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent.'"). On the contrary, Godwin indicates that he is receiving medical care for chronic pain and that he has received treatment at WSPF and the UW Hospital. Godwin does not state what type of additional treatment he has requested, when it was requested or why the

requested treatment was necessary. Likewise, he does not identify the person he requested care from, who denied his request for care or what reason, if any, was given for denial of care. To the extent that Godwin's complaint is liberally read as a disagreement with the level of that care that he has received or with treatment decisions, the allegations do not demonstrate deliberate indifference for purposes of a claim under the Eighth Amendment. *See Berry v. Peterman*, 604 F.3d 435, 441 (7th Cir. 2010) (citing *Estelle*, 429 U.S. at 106) (citation omitted)); *Ciarpaglini*, 352 F.3d at 331. Even assuming these vague allegations were sufficient to meet federal pleading standards or to state a claim for deliberate indifference, they fall well short of articulating imminent danger for purposes of § 1915(g).

Because Godwin's pleadings neither meet the imminent-danger exception nor state a claim for denial of medical care under the Eighth Amendment, his request for leave to proceed *in forma pauperis* will be denied.

ORDER

IT IS ORDERED that:

1. Plaintiff Roger Dale Godwin's request for leave to proceed *in forma pauperis* is DENIED.
2. The clerk's office is directed to CLOSE this case for administrative purposes.
3. If Godwin wishes to proceed with his complaint in this case, he must pay the full amount of the filing fee ($350.00) within thirty days. In the event that Godwin pays the filing fee, his complaint will be subject to further preliminary

screening under 28 U.S.C. § 1915A. If he does not pay the fee within 30 days, this case will be dismissed under Fed. R. Civ. P. 41(b).

Entered this 2nd day of May, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge