

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

JAMES RZEPLINSKI,

Plaintiff,

OPINION & ORDER

v.

14-cv-820-jdp

TAMMY MAASSEN, LIZZIE TEGELS,
JODI DAUGHERTY, DR. ONJUKKA, EDWARD WALL,
DEIRDRE MORGAN, CHARLES FACKTOR,
WELCOME ROSE, B. DELAP, and JODI DEROSA,

Defendants.

Plaintiff James Rzeplinski, a prisoner in the custody of the Wisconsin Department of Corrections at the Jackson Correctional Institution, has filed a complaint alleging that his dentures have broken and that various prison officials have not helped him get them fixed. He has already paid the \$400 filing fee for this action.

The next step is for the court to screen the complaint and dismiss any portions that are legally frivolous, malicious, fail to state a claim upon which relief may be granted, or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In screening 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 considering plaintiff's allegations, I will grant plaintiff leave to proceed on Eighth Amendment medical care claims against each defendant but deny him leave to proceed on claims that his Eighth Amendment rights were violated by threats of sexual abuse he received from other prisoners.

ALLEGATIONS OF FACT

Plaintiff James Rzeplinski is a prisoner in the custody of the Wisconsin Department of Corrections at the Jackson Correctional Institution (JCI).

On April 16, 2014, plaintiff made a dental service request to the JCI Health Services Unit about his broken dentures. Plaintiff was told multiple times that he was on the waiting list for repair, and that the prison did not have an on-staff dentist at the time. Plaintiff has still not received new dentures. Without his dentures, plaintiff has suffered bleeding gums, headaches, “mental stress,” and repeated sexual threats from other prisoners.

Plaintiff complained to defendants HSU supervisor Tammy Maassen, Warden Lizzie Tegels, complaint examiner Jodi Daugherty, and DOC Secretary Ed Wall, but none of them helped him with the problem. As part of the grievance process, defendant complaint examiners Charles Facktor and Welcome Rose, deputy secretary Deirdre Morgan, “dentist supervisor” Dr. Onjukka, “assistant” Jodi DeRosa, and B. Delap were made aware of the problem but did nothing to help.

ANALYSIS

The Eighth Amendment prohibits prison officials from acting with deliberate indifference to prisoners’ serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103-04 (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). 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, significantly affects an individual’s daily activities, *Gutierrez v. Peters*, 111 F.3d 1364, 1371-73

(7th Cir. 1997), or otherwise subjects the prisoner to a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Plaintiff alleges that his dentures are broken and have not been replaced, leading to pain and bleeding gums. This is sufficient to show that plaintiff has a serious medical need. He further alleges that he alerted each named defendant about the problem, but none of them have helped him. At this early stage of the proceedings, this is sufficient to show defendants' deliberate indifference to his dental need. Accordingly, I will allow plaintiff to proceed on Eighth Amendment claims against each defendant.

Plaintiff also alleges that he is being threatened with sexual abuse, but I do not understand plaintiff to be alleging that he has complained about those threats to defendants. Thus, although an intentional failure to protect a prisoner from physical threats could support an Eighth Amendment claim, I conclude that plaintiff does not state a failure to protect claim because he has not adequately alleged that any of the defendants were aware of the threats.

ORDER

IT IS ORDERED that:

1. Plaintiff James Rzeplinski is GRANTED leave to proceed on Eighth Amendment claims against defendants Tammy Maassen, Lizzie Tegels, Jodi Daugherty, Ed Wall, Charles Facktor, Welcome Rose, Deirdre Morgan, Dr. Onjukka, Jodi DeRosa, and B. Delap regarding their failure to address his broken dentures.
2. Plaintiff is DENIED leave to proceed on Eighth Amendment failure to protect claims against defendants.
3. 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 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 on behalf of defendants.

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

Entered July 6, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge