

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

HAJI JOHNSON,

Plaintiff,

OPINION AND ORDER

v.

14-cv-155-wmc

DR. JOAN HANNULA, JUDY
BENTLEY, JEFFREY PUGH, HOLLY
GUNDERSON, EDWARD WALL,
DR. HIEDRON, JEAN
ANNE VOEKS, BECK DRESSLER,
DEB ARNWICK and ANGIE MILAS,

Defendants.¹

State inmate Haji Johnson has filed a proposed civil action pursuant to 42 U.S.C. § 1983, alleging that he was denied adequate medical care while incarcerated by the Wisconsin Department of Corrections (“WDOC”) in violation of the Eighth and Fourteenth Amendments of the United States Constitution. Johnson has been granted leave to proceed *in forma pauperis* and he has made an initial partial payment of the filing fee as required by the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(b). Johnson has filed an amended version of his complaint (dkt. #16), and he requests leave to proceed.

Because Johnson is incarcerated, the court is required by the PLRA to screen his complaint and dismiss any portion that is legally 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 money damages. 28 U.S.C. § 1915A. In addressing any *pro se* litigant’s pleadings, the court must construe the allegations generously, and hold the complaint “to less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519,

¹ One of the defendants listed by plaintiff, Gary H. Hamblin, has been succeeded as Secretary of the Department of Corrections by Edward Wall. Therefore, the court substitutes Wall in Hamblin’s place pursuant to Fed. R. Civ. P. 25(d).

521 (1972). For reasons set forth below, the court will grant Johnson's request for leave to proceed with some, but not all, of his claims.

ALLEGATIONS OF FACT

Johnson alleges, and the court assumes for purposes of this screening order, the following facts.

Plaintiff Haji Johnson is presently confined at the Jackson Correctional Institution ("JCI") in Black River Falls. He was previously assigned to the Green Bay Correctional Institution ("GBCI") and the Stanley Correctional Institution ("SCI"), where several of the defendants are employed.

The following defendants are employed by WDOC at SCI: Dr. Joan Hannula; Nurse Practitioner Judy Bentley; Registered Nurse Deb Arnwick; Health Services Unit Supervisor Jean Anne Voeks; Health Services Unit Supervisor Beck Dressler; Nurse Angie Milas; and Warden Jeffrey Pugh. Defendant Hiedron is a physician employed by WDOC at GBCI. Edward Wall is Secretary of WDOC and Holly Gunderson is a regional director of health services employed by WDOC in Madison.

While Johnson was confined at GBCI in 2005, he wrote to the Health Service Unit ("HSU") complaining of bloody stool, constipation, weight loss and abdominal pain. He was treated with unspecified medication, but no diagnosis was made with respect to his condition.

In March of 2007, Johnson wrote to the HSU at GBCI, complaining of bloody stool, constipation, weight loss, abdominal pain and drowsiness. He was prescribed "Docusate Calcium" and told to "drink plenty of water." When his symptoms did not abate, Johnson requested an appointment with a physician.

In July 2007, Johnson was seen by Dr. Hiedron, who took stool samples. The samples were positive for blood. After undergoing a barium enema, which is used to diagnose problems affecting the large intestine, Johnson was diagnosed with “irritable bowel syndrome” or IBS in September 2007. In December 2007, Johnson transferred to SCI.

In June 2008, Johnson wrote to the HSU at SCI, complaining of sharp pains in his stomach. He was scheduled to see a physician the following month. At a follow-up examination with Nurse Practitioner Bentley, Johnson complained of the same symptoms but was told that his pain was attributable to IBS.

In March 2009, Johnson complained to Bentley that his diagnosis of IBS was improper, and he asked to see a specialist in gastroenterology. In April 2009, Johnson made the same complaint to Dr. Hannula after tests revealed blood in his stool.

Johnson saw Dr. Hannula again in June 2009, and raised concerns of possible colon cancer. Dr. Hannula told him that a colonoscopy was expensive, noting that he had already had a barium enema.

In December 2009, Johnson continued to complain that IBS was the wrong diagnosis, noting that there were profuse amounts of blood in his stool. He requested proper medication and therapy, but no action was taken.

In December 2010, Johnson was bedridden and experiencing “excruciating pain.” Stool samples were positive for blood. When Johnson raised his worsening condition to Nurse Arnwick, she attributed his symptoms to IBS and told him to drink more water.

In January 2011, Johnson was seen by Nurse Practitioner Bentley. Johnson reportedly felt that he was “close to death” and was in “enormous pain.” His request for a colonoscopy was denied because it was too expensive. He was treated with diarrhea medication and “pepto

bismol.” He was told to stay away from “gluten,” but had no idea what that was. Dr. Hannula finally scheduled him for a colonoscopy after Johnson reported “shooting blood out of [his] behind like the ‘Buchingham fountain.’” At this point, his weight had dropped from 192 to 159 pounds.

On February 2, 2011, Johnson had a colonoscopy and a specialist (Dr. Patrice Kennedy) with the University of Wisconsin (“UW”) Hospital diagnosed ulcerative colitis. Ulcerative colitis is a type of inflammatory bowel disease, consisting of chronic, recurrent ulceration in the colon. *See* DORLAND’S ILLUSTRATED MEDICAL DICTIONARY 384 (32ed ed. 2012); *see also* AMER. MEDICAL ASS’N, COMPLETE MEDICAL ENCYCLOPEDIA 382 (2003) (noting that “shallow and widespread bleeding ulcers are typical of ulcerative colitis”). Johnson was given enemas and other medication in an attempt to get his colitis into remission. Johnson was also treated for anemia and a protein deficiency.

In July and October 2011, Johnson requested a special diet that would not include foods that aggravated symptoms of ulcerative colitis. Dr. Hannula and HSU Supervisor Voeks allegedly ignored Johnson’s requests, advising him that he could supplement his diet through the canteen.

In March 2012, Johnson alleges his ulcerative colitis flared up painfully. Johnson claims that this condition was aggravated by the lack of an adequate diet. In January 2013, Johnson was also seen by Dr. Hannula after he developed a “stye” in his right eye, which Johnson contends is a symptom of ulcerative colitis. In March 2013, Johnson developed another stye in his left eye. Around this time, Johnson inquired about a colonoscopy due to his susceptibility to colon cancer and the exacerbation of his ulcerative colitis, including “frequent painful stool like 9 per day.” Dr. Hannula placed him on a regimen of prednisone, but did not

contact UW about his flare-up of ulcerative colitis. She also denied his request for a special diet, enemas or suppositories to treat his symptoms.

In April 2013, Johnson demanded to see a specialist after he reported feeling progressively worse. By this point, Johnson reports suffering from dry skin, weight loss, excruciating pain and bleeding during bowel movements. His blood pressure also registered abnormally high at 198/115. Johnson appealed to his mother for help, believing that he would “die soon.” When he saw Nurse Milas on April 22, 2013, she told Johnson to tell his mother to “stop calling here.” Johnson saw Nurse Arnwick and Dr. Hannula on April 28, 2013, but they ignored his concerns.

On May 2, 2013, Johnson was seen by a specialist (Diana Dupont) with UW, who concluded that he needed stronger medication and a new treatment regimen for his ulcerative colitis. Johnson was admitted to UW Hospital for a colonoscopy on May 8, 2013. At that time, Johnson alleges his weight had dropped to 148 pounds. While in the hospital, doctors allegedly advised Johnson that his colon may have to be removed if he did not adopt an aggressive treatment, and that they were unable to complete the colonoscopy because there was “remarkable scarring” in his bowels. He was discharged from the hospital on May 17, 2013, with a recommendation that he receive regular infusions of “quanteferin gold and Remicade” to treat his ulcerative colitis. Johnson claims that this recommendation was also disregarded upon his return to prison.

OPINION

Johnson seeks relief for alleged civil rights violations pursuant to 42 U.S.C. § 1983. To establish liability under § 1983, a plaintiff must establish that (1) he had a constitutionally

protected right; (2) he was deprived of that right in violation of the Constitution; (3) the defendant intentionally caused that deprivation; and (4) the defendant acted under color of state law. *Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009); *Schertz v. Waupaca County*, 875 F.2d 578, 581 (7th Cir. 1989).

Johnson's proposed complaint alleges that defendants failed to "provide medical care for those whom it is punishing by incarceration" in violation of the Eighth and Fourteenth Amendments of the United States Constitution. *See Estelle v. Gamble*, 429 U.S. 97, 103 (1976) (prison officials' failure to provide adequate medical care to prisoners may violate the Eighth Amendment). Johnson's Fourteenth Amendment claim merely reports the same litany of inadequate medical care, tacking on the allegations that this conduct constitutes a pattern of neglect and malpractice in violation of due process. Assuming for purposes of screening that such claims would have merit under other circumstances, the claim would give way to the more specific protections under the Eighth Amendment. *See Brown v. Budz*, 398 F.3d 904, 910 (7th Cir. 2005) (quoting *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254, 259, n.1 (7th Cir. 1996)); *see also Smego v. Mitchell*, 723 F.3d 752, 756 (7th Cir. 2013) (describing the right to adequate medical care under the Fourteenth Amendment as "functionally indistinguishable from the Eighth Amendment's protection for convicted prisoners").

The Eighth Amendment does not require that prisoners have unqualified access to health care." *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). Rather, to state a constitutional claim for denial of health care, an inmate's untreated medical needs must be objectively serious. *Id.* at 9-10; *Estelle*, 429 U.S. at 104. Serious medical conditions include: (1) those 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; and/or (3) conditions that have been “diagnosed by a physician as mandating treatment.” *Gutierrez v. Peters*, 111 F.3d 1364, 1371-73 (7th Cir. 1997). To state an Eighth Amendment violation, Carter must also show that the failure to treat was the result of “deliberate indifference” to his medical condition. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

In this case, Johnson appears to contend that Dr. Hiedron improperly or mistakenly diagnosed irritable bowel syndrome in 2007. Even assuming that this claim is true, it falls outside the six-year statute of limitations. *See* Wis. Stat. § 893.53; *Gray v. Lacke*, 885 F.2d 399, 409 (7th Cir. 1989) (Wisconsin’s six-year statute of limitations for violations of “general personal rights” was the most analogous to claims arising under 42 U.S.C. § 1983). The statute of limitations begins to run upon injury (or, as is typically the case with federal claims, upon discovery of the injury) and is not tolled by subsequent injuries. *Limestone Dev. Corp. v. Village of Lemont, Ill.*, 520 F.3d 797, 801-02 (7th Cir. 2008) (citing *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 627-28 (2007); *Heard v. Sheahan*, 253 F.3d 316, 318–19 (7th Cir. 2001)). And even if timely, Johnson’s allegation that Dr. Hiedron committed medical malpractice neither rises to the level of deliberate indifference nor is it actionable under the Eighth Amendment. *See Estelle*, 429 U.S. at 106 (“Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.”).

Johnson contends further that Nurse Practitioner Bentley, Nurse Arnwick and Dr. Hannula violated his rights by refusing to refer him to a specialist in 2009, when he raised concerns about a possible misdiagnosis. He claims that refusal resulted in his being denied care for ulcerative colitis, or at least in that care being delayed until 2011. Thereafter, Johnson claims that Dr. Hannula and HSU Supervisor Voeks were deliberately indifferent to his need

for a special diet and for adequate care for ulcerative colitis. At least at this early stage of the litigation, these allegations are sufficient to state a claim for denial of adequate, prompt medical care. Therefore, Johnson may proceed with claims against Bentley, Arnwick, Dr. Hannula and Voeks. Johnson may not, however, proceed with claims against any other defendant because he does not allege the requisite personal involvement in his medical care.

Although plaintiff's allegations against Bentley, Arnwick, Dr. Hannula and Voeks pass muster under the court's lower standard for screening, he will bear the burden to present admissible evidence permitting a reasonable trier of fact to conclude that defendants acted with deliberate indifference to his serious medical need to be successful on his claim, which is a high standard. Inadvertent error, negligence or even gross negligence are all insufficient grounds to invoke the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be Johnson's burden to prove: (1) his condition constituted a serious medical need; and (2) perhaps even more daunting, that the defendants knew his condition was serious, caused associated pain and suffering, could be relieved by prescription medication and deliberately ignored his need for this medication. Both elements may well require Johnson to obtain and offer credible, expert testimony from a physician in the face of medical evidence to the contrary.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Haji Johnson's request for leave to proceed on his Eighth Amendment claim against defendants Joan Hannula, Judy Bentley, Deb Arnwick and Jean Anne Voeks is GRANTED. Leave to proceed against all other defendants and with his other, Fourteenth Amendment claim is DENIED.
- (2) 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

- (3) 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.
- (4) 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.
- (5) Plaintiff is obligated to pay the unpaid 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 10th day of June, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge