

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

LAMONT WALKER,

Plaintiff,

v.

OPINION & ORDER

15-cv-293-jdp

BURTON COX, GARY BOUGHTON,
S. ANDERSON, A. MCLEAN, LUNDE,
B. EDGER, and SGT. SHERMAN,

Defendants.

Plaintiff Lamont Walker is a prisoner in the custody of the Wisconsin Department of Corrections currently housed at the Wisconsin Secure Program Facility, located in Boscobel, Wisconsin. Plaintiff has filed a complaint alleging that he has developed a bacterial infection from unsanitary conditions at the prison and that various prison officials have refused to help him with treatment. He seeks leave to proceed with his case *in forma pauperis*, and he has already made an initial partial payment of the filing fee previously determined by the court.

Before I screen plaintiff's complaint, I will address a series of motions he has filed. As with his case no. 14-cv-752-jdp, plaintiff asks for his cases to be reassigned to a different judge for screening. Dkt. 11 and 12. I will deny those motions because each judge in this district screens the cases before him or her in the due course of processing that judge's docket. Plaintiff has also filed a motion asking the court to issue a ruling in his cases. Dkt. 13. I will grant that motion as it applies to this case and screen his case.

In screening the complaint, I must 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. §§ 1915 and

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 allow him to proceed on claims about his medical care but deny him leave to proceed on claims that the warden is deliberately indifferent to the unsanitary conditions that plaintiff believes caused his infection. Plaintiff has also filed a motion for the court's assistance in recruiting him counsel, which I will deny without prejudice.

ALLEGATIONS OF FACT

Plaintiff Lamont Walker is a prisoner at the Wisconsin Secure Program Facility. Starting in 2011, plaintiff started having severe stomach pain as if he were extremely hungry. Yet even after plaintiff would eat, his stomach would continue to hurt. In mid-2013, plaintiff submitted a health service request about his stomach pain. A nurse examined plaintiff and gave him ibuprofen.

Plaintiff's stomach continued to hurt, and he vomited "specks of blood," had difficulties using the toilet, and suffered headaches as well. Plaintiff brought the problems to defendant nurse B. Edger's attention, but she responded, "Stop doing so many sit-ups," and, "What do you want me to do about it," and walked away.

Plaintiff raised the problem with defendant nurse Lunde, but she told plaintiff, "Well, if the last nurse said she was going to make a note of your issue, why are you telling me?"

Defendant nurse S. Anderson would refuse to step inside the vestibule of the segregation cells to check on prisoners when she conducted wellness checks of prisoners. Plaintiff was forced to "disrupt the unit" to get Anderson's attention. Anderson responded to

plaintiff's health concerns by stating, "Submit a Health Request because this isn't the Hilton Hotel."

On October 10, 2014, plaintiff called defendant nurse A. McLean over to his cell while she was conducting medical rounds. McLean told plaintiff, "This is not medical assessment time, as long as I can see you're standing or breathing, you don't need medical attention." After plaintiff argued with McLean, she stated, "Don't cry to me, submit a Health Request if you need to be seen."

On December 6, 2014, plaintiff had his blood drawn, and it was discovered that he was suffering from a H. pylori bacterial infection. Later that month, plaintiff met with defendant Dr. Burton Cox. Cox suggested that other prisoners have had the same problem and that the prison system did not have the money to "find the source." Cox prescribed plaintiff antibiotics.

After his two-week course of antibiotics, plaintiff's symptoms did not improve. Plaintiff filed health service requests and Cox prescribed him different medications, but none of the helped. Plaintiff believes that exacerbated his symptoms.

On April 4, 2015, plaintiff pushed the call button in his cell because he was vomiting blood. Defendant Sergeant Sherman told plaintiff that he would contact the Health Services Unit. A few hours later, plaintiff asked defendant Anderson (who was on the unit passing out medication) if she was there to see him. Anderson said, "No," which plaintiff took to mean that defendant Sherman did not contact the Health Services Unit as he said he would. Later that month, plaintiff was diagnosed with chronic inflammation and chronic gastritis.

The various segregation cells plaintiff was placed in at WSPF were filthy and unsanitary, with "mold-like substance" on the faucets and foul odors that suggest sewage is

not being disposed of properly. Plaintiff believes that the prison's water supply is carrying the bacteria. Several inmates have the same infection. Plaintiff has contacted Gary Boughton about the unsanitary living conditions that he believes have led to his bacterial infection, but Boughton has disregarded the complaints.

ANALYSIS

A. Eighth Amendment claims

Plaintiff brings Eighth Amendment claims against defendants Edger, Lunde, Anderson, McLean, Sherman, and Cox for his medical treatment as well as a claim against defendant Warden Boughton for failing to rectify the unsanitary conditions that plaintiff believes caused his condition.

To state a claim under the Eighth Amendment for inadequate medical care, a prisoner must allege facts from which it can be inferred that he had a "serious medical need" and that defendants were "deliberately indifferent" to this need. *Estelle v. Gamble*, 429 U.S. 97, 104 (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's allegations are sufficient to state Eighth Amendment claims against each of the defendants involved in his treatment. His allegations about his stomach problems show

that he has a serious medical need, and his allegations regarding his medical treatment at least raises the inference that at various times, each of the nurses and Sergeant Sherman could have assisted plaintiff yet chose not to. In addition, plaintiff states a claim against Dr. Cox because his allegations suggest that Cox provided only ineffective treatment. *Gonzalez v. Feinerman*, 663 F.3d 311, 314 (7th Cir. 2011) (physicians are “obligated not to persist in ineffective treatment”).

As for his allegations about the unsanitary conditions in the segregation cells at WSPF, the Eighth Amendment’s prohibition against cruel and unusual punishment imposes a duty upon prison officials to provide prisoners “humane conditions of confinement.” *Farmer*, 511 U.S. at 832. Plaintiff’s allegations must suggest both that the conditions to which he was subjected were “sufficiently serious” and that defendants were deliberately indifferent to his health or safety. *Id.* at 835-36.

The problem for plaintiff is that his belief that he developed the infection from unsanitary conditions is complete speculation. *See, e.g., Helicobacter Pylori Infections*, <https://www.nlm.nih.gov/medlineplus/helicobacterpyloriinfections.html> (last visited Dec. 14, 2015) (“It may be spread by unclean food and water, but researchers aren’t sure.”); *Helicobacter pylori and Peptic Ulcer Disease; The Key to Cure*, <http://www.cdc.gov/ulcer/keytocure.htm> (last visited Dec. 14, 2015) (“Since the source of H. pylori is not yet known, recommendations for avoiding infection have not been made.”). Plaintiff does not provide any concrete allegations making it reasonable to infer that the water is tainted, and Warden Boughton cannot be held liable on a claim for deliberate indifference for a condition without a proven cause. Therefore, I will dismiss plaintiff’s claim against Boughton.

B. Recruitment of counsel

Plaintiff has also filed a motion for the court's assistance in recruiting him counsel. Dkt. 16. To show that it is appropriate for the court to recruit counsel, plaintiff must first show that he has made reasonable efforts to locate an attorney on his own. *See Jackson v. Cnty. of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992) ("the district judge must first determine if the indigent has made reasonable efforts to retain counsel and was unsuccessful or that the indigent was effectively precluded from making such efforts"). To meet this threshold requirement, this court generally requires plaintiffs to submit correspondence from at least three attorneys to whom they have written and who have refused to take the case. Plaintiff has provided three such letters.

Second, this court will seek to recruit counsel for a pro se litigant only when the litigant demonstrates that his case is one of those relatively few in which it appears from the record that the legal and factual difficulty of the case exceeds his ability to prosecute it. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). I conclude that it is too early to make that assessment. The case has not passed the relatively early stage in which a defendant may file a motion for summary judgment based on exhaustion of administrative remedies, which often ends up in dismissal of cases such as plaintiff's before they advance deep into the discovery stage of the litigation. Should the case pass the exhaustion stage and plaintiff believes that he is unable to litigate the suit himself, he may renew his motion.

ORDER

IT IS ORDERED that:

1. Plaintiff Lamont Walker's motions to reassign this case, Dkt. 11 and 12, are DENIED.
2. Plaintiff's motion for a ruling, Dkt. 13, is GRANTED with respect to this case.
3. Plaintiff is GRANTED leave to proceed on Eighth Amendment medical care claims against defendants B. Edger, Lunde, S. Anderson, A. McLean, Sgt. Sherman, and Burton Cox.
4. Plaintiff is DENIED leave to proceed on an Eighth Amendment conditions of confinement claim against defendant Gary Boughton. Defendant Boughton is DISMISSED from the case.
5. Plaintiff's motion for the court's assistance in recruiting him counsel, Dkt. 2, is DENIED without prejudice.
6. 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.
7. 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.
8. 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 December 18, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge