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

CHARLES E. SPANGLER,

Plaintiff,

v. OPINION & ORDER

DONNA PITTMAN, STACY ROSE, JOEL BRETTINGEN, R. SALIMES, and M. KLOTZ, 16-cv-312-jdp

Defendants.

Pro se plaintiff Charles Spangler is in the custody of the Wisconsin Department of Corrections (DOC), and he is currently incarcerated at the Columbia Correctional Institution (CCI). Plaintiff has filed a proposed complaint under 42 U.S.C. § 1983, alleging that he received inadequate medical treatment while he was a pretrial detainee in the Eau Claire County jail. Dkt. 8. Among other things, plaintiff alleges that jail officials failed to accommodate his back and neck pain, did not promptly respond to his requests for treatment, and refused to provide him with pain medication.

Plaintiff made an initial partial payment of his filing fee, as directed by the court. The next step in this case is for me to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief can be granted, or asks for monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915, 1915A. In screening any pro se litigant's complaint, I must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). After reviewing the complaint with this principle in mind, I will grant plaintiff leave to proceed with Fourteenth Amendment claims against defendants Donna Pittman, Stacy Rose, Joel Brettingen, R. Salimes, and M. Klotz.

ALLEGATIONS OF FACT

Plaintiff is currently incarcerated at CCI, which is located in Portage, Wisconsin. The relevant events in this case occurred while plaintiff was a pretrial detainee in the Eau Claire County jail. Defendants are jail officials and medical personnel who provided care to detainees at the jail.

Plaintiff was booked into the jail on March 13, 2010. During his intake, he informed jail officials that he suffered from several medical conditions. These conditions caused him back and neck pain.

While plaintiff was at the jail, he submitted several written requests for non-emergency medical attention. Plaintiff filed the first of these requests a week after his intake, asking to see a doctor or nurse to discuss his medications and his back and neck pain. When plaintiff did not receive a response to this request, he filed a second request a few days later, asking for an extra mattress. Plaintiff also complained that the jail's policy of locking detainees out of their cells during the day was difficult for him because he needed to lie down periodically throughout the day.

An unidentified medical staff member replied to plaintiff's second request on March 24, 2010, indicating that "medical does not approve extra mattresses nor can we excuse you from the jails [sic] lock out procedures." Dkt. 1-1, at 2. Plaintiff filed a third request for medical care the same day, essentially repeating his concerns about the lock-out rule. A medical staff member responded that plaintiff was on the list to see a doctor and that the jail was waiting to receive plaintiff's medical records from other providers.

Plaintiff also filed the first of several grievances concerning his medical care on March 24, 2010. He complained that he had been requesting to see the doctor for about a week and

that the lock-out rule caused him pain. Plaintiff requested to see a doctor and for jail officials to not lock him out of his cell during the day. Defendant Klotz, a sergeant at the jail, responded by writing that he would speak to a nurse. Klotz suggested that plaintiff should complete another request to see the doctor. Klotz also noted that plaintiff had received an additional mattress, which he would allow plaintiff to keep until he spoke with a nurse.

Medical records indicate that defendant Pittman, a doctor at the jail, saw plaintiff on March 31, 2010. She noted plaintiff's complaints and prescribed medication to manage his pain. But she did not recommend that plaintiff receive any other accommodations from the jail. Defendant Rose, a registered nurse, also signed the entry in plaintiff's medical records.

Over the next two months, plaintiff continued to submit grievances and requests for non-emergency medical attention. Defendants Brettingen and Salimes reviewed two of plaintiff's grievances, and they denied his requests for an exemption from the lock-out rule and for a plastic chair to use instead of the metal stools in the jail.

Pittman saw plaintiff again on May 4, 2010. She noted his complaints, and she recommended that he receive a second mattress. But she did not make any recommendation regarding a plastic chair, nor did she address plaintiff's request for an exemption from the jail's lock-out rule. Rose again co-signed the entry in plaintiff's medical record.

Plaintiff was transferred out of the Eau Claire County jail and into a DOC prison on May 20, 2010. He filed a complaint in this court on May 11, 2016.

ANALYSIS

Because plaintiff was a pretrial detainee when the relevant events occurred, the Due Process Clause of the Fourteenth Amendment—as opposed to the Eighth Amendment's

prohibition on cruel and unusual punishment—applies to his claims. *Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650, 664 (7th Cir. 2012). The Seventh Circuit has held that the Fourteenth Amendment prohibits "deliberate indifference to [a pretrial detainee's] serious medical needs," and that "[t]his standard is essentially the same as the Eighth Amendment's prohibition against cruel and unusual punishment, which applies to convicted prisoners." *Burton v. Downey*, 805 F.3d 776, 784 (7th Cir. 2015); *see also Riley v. Kolitwenzew*, No. 15-1137, 2016 WL 1077168, at *3 (7th Cir. Mar. 18, 2016) ("Riley was a pretrial detainee, but we evaluate this claimed denial of due process using the same deliberate-indifference standard governing Eighth Amendment claims from convicted prisoners.").

To state a claim for deliberate indifference, plaintiff must allege facts to support both an objective element and a subjective element.[1] Specifically, plaintiff must allege that "conditions were objectively serious enough to amount to a constitutional deprivation and that defendants possessed a sufficiently culpable state of mind. . . . The subjective element requires more than negligence and it approaches intentional wrongdoing." *Burton*, 805 F.3d at 784 (citations and internal quotation marks omitted). Based on the allegations in plaintiff's complaint, I conclude that he has stated claims against defendants Pittman, Rose, Brettingen, Salimes, and Klotz for deliberate indifference to his serious medical needs.

[1] The Seventh Circuit's approach is somewhat at odds with the Supreme Court's holding that in excessive force cases, pretrial detainees must show only that the force used on them was objectively unreasonable—there is no subjective element. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015). Perhaps *Kingsley* is limited to excessive force claims. But that would be a highly technical distinction and one that the Seventh Circuit appears to reject, at least with regard to claims about a pretrial detainee's conditions of confinement. *See Davis v. Wessel*, 792 F.3d 793, 801 (7th Cir. 2015) ("There was great debate between the parties as to whether *Kingsley*—which originated from our circuit—controls in this case. Although *Kingsley* was an *excessive force* due process case, unlike Davis's case, its discussion is instructive to our due process analysis." (original emphasis)). Nevertheless, the cases cited in the text show that the Seventh Circuit requires both a subjective and an objective element.

Examples of objectively serious conditions that satisfy the first element of a deliberate indifference claim include: "an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain." *Hayes v. Snyder*, 546 F.3d 516, 522-23 (7th Cir. 2008). Here, plaintiff suffered from back and neck pain, as well as other conditions that worsened when defendants did not accommodate them. Plaintiff has also submitted a disability determination from the Social Security Administration, indicating that he suffers from obesity and osteoarthrosis.[2] Dkt. 1-1, at 16-22. As alleged, these conditions qualify as objectively serious.

As for the subjective element, plaintiff alleges that Pittman and Rose were aware of his medical condition because they documented his complaints of pain in his medical records. *See id.* at 14-15. Despite plaintiff's complaints, Pittman and Rose did not recommend excusing plaintiff from the jail's lock-out rule or providing him with a plastic chair to use instead of the metal stools at the jail. Plaintiff appears to simply disagree with the decisions that medical personnel made about the severity of his condition, which may not be enough to succeed on a claim for deliberate indifference. *See Berry v. Peterman*, 604 F.3d 435, 441 (7th Cir. 2010) ("Neither medical malpractice nor mere disagreement with a doctor's medical judgment is enough to prove deliberate indifference in violation of the Eighth Amendment."). But construing the complaint liberally, it is at least plausible that Pittman and Rose simply ignored plaintiff's requests for accommodations, or that they provided treatment that was

[2] Plaintiff relies on the Social Security determination as evidence that he was "legally disabled." But in the context of Social Security, a finding of disability has to do with whether the claimant can work, not necessarily with whether the claimant requires accommodations in basic activities of daily living.

outside the scope of acceptable medical practice. Thus, at this point, I conclude that plaintiff has adequately alleged that Pittman and Rose were deliberately indifferent to his serious medical needs by refusing to recommend that jail officials provide him with a plastic chair and exempt him from the jail's lock-out rule.

Plaintiff also alleges that Pittman and Rose failed to promptly address his requests for medical treatment. Plaintiff first asked to see a doctor on March 20, 2010. His request was for non-emergency care, "to discuss [his] medications." Dkt. 1-1, at 1. Although plaintiff submitted another request four days later, he simply asked for another mattress and an exemption to the lock-out rule. In response to plaintiff's third request, medical staff scheduled him to see a doctor on March 31, 2010. "A delay in treating non-life-threatening but painful conditions may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate's pain. . . . The length of delay that is tolerable depends on the seriousness of the condition and the ease of providing treatment." *Arnett v. Webster*, 658 F.3d 742, 753 (7th Cir. 2011) (citations, internal quotation marks, and alterations omitted). It is not clear that Pittman and Rose were responsible for scheduling plaintiff's appointment or that they actually chose to delay seeing him. Moreover, under the circumstances that plaintiff alleges, an 11-day delay does not seem unreasonable. But these are fact-intensive issues that I cannot resolve at the pleading stage. At this point, plaintiff has adequately alleged that Pittman and Rose were deliberately indifferent to his serious medical needs by refusing to promptly address his requests for treatment.

Plaintiff's last set of allegations against Pittman and Rose arises out of their failure to provide him with pain medication. The medical records that plaintiff has submitted with his complaint suggest that Pittman prescribed pain medication on March 31, 2010, the first time

that she saw plaintiff. Dkt. 1-1, at 14. But plaintiff nevertheless alleges that defendants failed to provide him with pain medication. Dkt. 8, at 7. Again, I cannot resolve this discrepancy at the pleading stage, and so plaintiff may proceed with claims based on these allegations.

As for Brettingen, Salimes, and Klotz, plaintiff alleges that the jail officials were aware of his medical condition because they reviewed grievances that plaintiff filed explaining why and how he was in pain. In his grievances, plaintiff specifically requested a plastic chair and an exemption from the lock-out rule. Brettingen, Salimes, and Klotz refused to provide these accommodations, often relying on the fact that medical personnel had not approved plaintiff's requests. *See, e.g.*, Dkt. 1-1, at 4, 12-13. Non-medical personnel can rely on the expertise of doctors and nurses, and "if a prisoner is under the care of medical experts, a non-medical prison official will generally be justified in believing that the prisoner is in capable hands." *Arnett*, 658 F.3d at 755. But jail officers "cannot simply ignore an inmate's plight." *Id.* Based on plaintiff's complaint, he appears to allege that this is what Brettingen, Salimes, and Klotz did. Moreover, the accommodations that plaintiff was requesting were not strictly "medical" accommodations—plaintiff wanted an exemption from the jail's lock-out rule, and he wanted to use a plastic chair. It is plausible that Brettingen, Salimes, and Klotz could have granted plaintiff these accommodations even without a recommendation from medical staff. Thus, I conclude that plaintiff has adequately alleged that Brettingen, Salimes, and Klotz were deliberately indifferent to his serious medical needs.

To summarize: plaintiff may proceed with claims against Pittman and Rose for their refusal to recommend the accommodations that plaintiff requested, for their failure to promptly respond to plaintiff's requests for treatment, and for their failure to provide

plaintiff with pain medication. Plaintiff may also proceed against Brettingen, Salimes, and Klotz for their refusal to provide the accommodations that plaintiff requested.

ORDER

IT IS ORDERED that:

1. Plaintiff Charles Spangler is GRANTED leave to proceed against defendants Donna Pittman, Stacy Rose, Joel Brettingen, R. Salimes, and M. Klotz on his Fourteenth Amendment claims, as indicated above.

2. The court will send copies of plaintiff's complaint and this order to the United States Marshal for service on 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. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered July 8, 2016.

BY THE COURT:

/s/

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JAMES D. PETERSON
District Judge