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

PAUL D. AMMERMAN,

Plaintiff,

v.

NURSE SEAMAN and JANE/JOHN DOE,
Health Services Unit Supervisor at Columbia
Correctional Institution,

Defendants.

OPINION AND ORDER

17-cv-800-wmc

Pro se plaintiff Paul D. Ammerman has filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging that defendants violated his Eighth Amendment rights. His amended complaint is ready for screening, as required by 28 U.S.C. § 1915A, and Ammerman also seeks a preliminary injunction and temporary restraining order (dkt. #15.) While the court will grant Ammerman leave to proceed against Nurse Seaman, his request for injunctive relief will be denied.

ALLEGATIONS OF FACT[1]

A. Parties

Ammerman is currently incarcerated at the Columbia Correctional Institution ("CCI"). The defendants, Nurse Seaman and Jane Doe, the Health Service Unit Supervisor, are employees of the Wisconsin Department of Corrections ("DOC") at CCI.

[1] For purposes of screening only, the court assumes the following facts based on the allegations in plaintiff's proposed amended complaint and attached exhibits (dkt. #10), resolving all ambiguities and drawing all reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

B. Denial of Medical Care

Ammerman has a history of high blood pressure. On May 5, 2017, during a bi-weekly check-up, he informed Nurse Seaman that he felt heaviness in his chest, chest pain and had difficulty breathing. He also stated that his pain management medication, Duloxetine 60 mg, was being administered at the wrong time of day. Seaman responded that the only purpose of the visit was to check his blood pressure. Ammerman requested that she consult Dr. Springs, who was nearby, but Seaman again stated that she would only check his blood pressure. Ammerman alleges he then stated that her actions constituted "cruel and unusual punishment" and Seaman became belligerent and had him escorted from the room. Ammerman alleges he suffered a seizure later that day, which could have been prevented had he received attention for his medication question when he requested it. Ammerman claims that HSU Manager Doe was responsible for creating on "a dangerous protocol in which it was OK to delay checking the plaintiff's blood pressure if he had questions about medication." (Am. Compl. (dkt. #10) ¶ 22.)

Along with his amended complaint, Ammerman submitted documentation related to the inmate complaint he submitted after this incident. (*See* dkt. #10-10.) According to the report prepared by the Inmate Complaint Examiner ("ICE"), Seaman's version of their interaction was that Ammerman became "angry and threatening" before being asked to leave. (*Id.* at 1.)

OPINION

Plaintiff claims that his rights under the Eighth Amendment were violated by defendants' indifference to his serious medical needs. He is also seeking injunctive relief,

requiring him to receive Gabapentin for his seizures and to stop defendants from retaliating against him. The court addresses each issue in turn.

I. Denial of Medical Care

Plaintiff will be granted leave to proceed on an Eighth Amendment claim against both defendants for deliberate indifference to his medical needs. The Eighth Amendment "establish[es] the government's obligation to provide medical care for those whom it is punishing by incarceration." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). To state a deliberate indifference claim, a plaintiff must create an inference that his medical needs were "objectively serious" and that prison officials possessed a "deliberately indifferent" state of mind. *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997).

"A serious medical condition is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). To establish defendants' indifference to serious medical needs, a plaintiff must prove that: (1) he had a serious medical need; (2) defendants knew that plaintiff needed medical treatment; and (3) defendants consciously failed to take reasonable measures to provide the necessary treatment. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

As an initial matter, plaintiff has sufficiently alleged that his high blood pressure was a serious medical need, especially when combined with chest pain and difficulty breathing. The court must, therefore, evaluate whether plaintiff has alleged facts that would permit a reasonable trier of fact to find that each defendant *knew* of his needs and

failed to take reasonable measures to address them. With respect to Nurse Seaman, plaintiff's allegations that she outright refused to address his concern that he was receiving his medication at the wrong time supports such an inference, so the court will allow plaintiff to proceed against her.

As for HSU manager Doe, however, plaintiff has not alleged that this individual was personally involved in his care on May 5, 2017, which is fatal to a claim against her. *Minix v. Canarecci*, 597 F.3d 824, 833-34 (7th Cir. 2010) ("[I]ndividual liability under § 1983 requires personal involvement in the alleged constitutional violation."). Nor may Doe be held liable by virtue of her role as the HSU manager, since a supervisory defendant cannot be held liable under § 1983 for a subordinate's conduct simply because of his or her position as a supervisor. *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir. 2001). To maintain a claim against a supervisory defendant, plaintiff must allege facts showing that the supervisor had sufficient *personal* responsibility in the allegedly unconstitutional conduct. Said another way, the facts must support a finding that the supervisor "directed the conduct causing the constitutional violation, or . . . it occurred with [his] knowledge or consent." *Sanville v. McCaughtry*, 266 F.3d 724, 739-40 (7th Cir. 2001) (internal citations omitted). While plaintiff alleges that Doe was responsible for creating the "protocol" that apparently required Seaman to direct him to submit a health services request rather than treat him, plaintiff has not alleged that Doe knew or had reason to know that this protocol was causing HSU staff to ignore prisoners' medical needs generally or plaintiff's particular needs specifically. Accordingly, the court will not grant plaintiff leave to proceed against Doe, who will be dismissed.

II. Injunctive Relief (dkt. #15)

Finally, to prevail on a motion for a preliminary injunction, plaintiff must show: (1) a likelihood of success on the merits of his case; (2) a lack of an adequate remedy at law; and (3) an irreparable harm that will result if the injunction is not granted. *Lambert v. Buss*, 498 F.3d 446, 451 (7th Cir. 2007). Furthermore, the Prison Litigation Reform Act ("PLRA"), which governs this lawsuit, narrows the available relief to an even greater extent in cases involving prison conditions. Specifically, the PLRA states that any injunctive relief to remedy prison conditions must be "narrowly drawn to extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2); *see also Westefer v. Neal*, 682 F.3d 679, 681 (7th Cir. 2012) (vacating overbroad injunction related to the procedures for transferring prisoners to a supermax prison). The PLRA also requires this court to "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief." § 3636(a)(2). Since plaintiff's assertion that he suffers from a seizure disorder requiring Gabapentin is not supported by his medical record, and he has not come forward with any facts suggesting that any defendants are retaliating against him, the court is denying his request for injunctive relief.

With respect to his request for Gabapentin in particular, in plaintiff's other lawsuit before the court, the court addressed plaintiff's concern that he was not being provided access to Gabapentin, which plaintiff described as his anti-seizure medication. *See Ammerman v. Singleton*, No. 17-cv-193-wmc, dkt. #27 (W.D. Wis. July 6, 2018) ("the '193

case"). Since plaintiff's claims in that lawsuit involved defendants located at another institution, the court noted that his request would be resolved in *this* case and directed counsel for the DOC to provide a status report with respect to plaintiff's need for seizure medication. Counsel thereafter submitted a declaration from Dr. Syed, a CCI physician, which contained the following material representations about plaintiff's condition and previous Gabapentin prescriptions:

- Dr. Syed reviewed Ammerman's medical records and found no history of seizures.
- Ammerman's records show that he was initially prescribed Gabapentin on July 3, 2015, for complaints of pain in his left shoulder that radiated down his arm.
- Dr. Syed examined Ammerman on February 14, 2017, and increased his Gabapentin dose and prescribed more pain medications. Dr. Syed also ordered that Ammerman be tapered off of Gabapentin.
- Dr. Syed restarted Ammerman on Gabapentin on May 8, 2017, for his pain.
- On January 9, 2018, Ammerman was seen at UW Health Faint and Fall Clinic to assess Ammerman for his November 17, 2017, and December 25, 2017, fainting spells. Dr. Kalscheur at UW Health opined that Ammerman's symptoms were consistent with lightheadedness. An echocardiogram was conducted, showing that Ammerman's hear was functioning well with no structural or valvular abnormalities that would explain why he fainted.
- Dr. Syed saw no indication that Ammerman might have epilepsy or a seizure disorder.
- In June of 2018, Ammerman received a conduct report for misuse of medication after several Gabapentin pills were found in his cell.
- As of July 24, 2018, Ammerman was prescribed Nortriptyline for his nerve pain, so in Dr. Syed's view, Ammerman has no need for Gabapentin.

(Syed Decl., *Ammerman*, No. 17-cv-193 (dkt. #32) ¶¶ 9-16.)

While plaintiff disputes some of the assertions in Dr. Syed's declaration, and takes issue with Dr. Syed's treatment decisions, what is material with respect to his motion is whether plaintiff currently suffers from a seizure-related condition requiring a Gabapentin prescription. Yet plaintiff has not come forward with any evidence beyond his own belief that he suffers from seizures that require him to receive Gabapentin. While plaintiff believes that he may have a seizure disorder, his personal belief that he suffers from seizures is insufficient to create a dispute of material of fact about whether he has an untreated seizure disorder. Indeed, plaintiff's medical records reveal that UW Health professionals evaluated him and did not see the need to refer him for a neurological consult. To the extent plaintiff is seeking a renewal of Gabapentin for his pain, he does not dispute that he was receiving Nortriptyline for his pain. Ultimately, plaintiff's assertions about his need for Gabapentin amount to mere disagreement with his health care professionals, and, more importantly, the most recent filings indicate that plaintiff is receiving pain medication. Accordingly, the court sees no basis to hold a hearing with respect to his request for Gabapentin, and is denying his motion for a preliminary injunction and temporary restraining order.

ORDER

IT IS ORDERED that:

1) Plaintiff Paul D. Ammerman's motion for leave to file an amended complaint (dkt. #9) is GRANTED.

2) Plaintiff is GRANTED leave to proceed on Eighth Amendment deliberate indifference claims against defendant Seaman.

3) Plaintiff is DENIED leave to proceed on any other claims, and HSU Manager Doe is DISMISSED.

4) Plaintiff's Motion for a Preliminary Injunction and Temporary Restraining Order (dkt. #15) is DENIED.

5) 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 defendant. Under the agreement, the Department of Justice will have 60 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 defendant.

6) 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 defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

7) 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 this 27th day of September, 2019.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge