

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

LEON BANKS,

Plaintiff,

OPINION AND ORDER

v.

19-cv-793-wmc

STAFF/MEDICAL STAFF AT DODGE
CORRECTIONAL INSTITUTION,
MILWAUKEE SECURE DETENTION
FACILITY, and WISCONSIN RESOURCE
CENTER, JOHN DOES 1, 2, 3, and
JANE DOES 1, 2, 3,

Defendants.

Pro se plaintiff Leon Banks, who is currently incarcerated at the Wisconsin Resource Center (“WRC”), filed this lawsuit pursuant to 42 U.S.C. § 1983, claiming that his constitutional rights were violated while he was incarcerated at the Dodge Correctional Institution (“Dodge”), Milwaukee Secure Detention Facility (“MSDF”) and the WRC between March 2018 and June 2019. Previously in this lawsuit, the court directed Banks to file an amended complaint that meets the requirements of Federal Rule of Civil Procedure 8 and 20. Banks timely filed a proposed amended complaint, in which he appears to limit the claims he is pursuing to the treatment he received at MSDF, which the court has screened as required by 28 U.S.C. §§ 1915(e)(2), 1915A. For the reasons that follow, the court will grant Banks leave to proceed against the MSDF officials involved in responding to his complaints about back pain in April of 2018.

ALLEGATIONS OF FACT¹

Previously Banks named as defendants “staff/medical staff” at Dodge, MSDF and WRC; John Does 1, 2 and 3; and Jane Does 1, 2 and 3, but in his proposed amended complaint Banks reduces the defendants to “the Milwaukee Secure Detention Facility defendants.”

Banks alleges that on March 28, 2018, he submitted a health care complaint regarding his back pain, and on April 4, he was seen for back pain, bruises and bed sores, which he alleges were caused by a thin mattress. Banks alleges that nothing was done to treat his back pain at that time.

On April 12, Banks submitted another health service request, again complaining of back pain, and this time he was referred to his psychiatrist. On April 16, Banks submitted a third health service request, again complaining about back pain as well as bed sores. Banks waited another three days before submitting another health service request, at which point he was informed that he was scheduled to be seen on April 24. However, Banks alleges that nothing was done from him that day, nor was he referred to an off-site doctor.

OPINION

To state an Eighth Amendment claim related to medical or mental health care, a plaintiff must allege facts supporting an inference that his treatment demonstrates “deliberate indifference” to a “serious medical need.” *Estelle v. Gamble*, 429 U.S. 97, 104-

¹ For purposes of screening, the court accepts all of plaintiff’s well-pleaded allegations as true, construing all ambiguities and considering all facts in plaintiff’s favor. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

05 (1976); *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). “Serious medical needs” include (1) life-threatening conditions or those carrying a risk of permanent serious impairment if left untreated, (2) withholding of medical care that results in needless pain and suffering, or (3) conditions that have been “diagnosed by a physician as mandating treatment.” *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997). “Deliberate indifference” encompasses two elements: (1) awareness on the part of officials that the prisoner needs medical treatment and (2) disregard of this risk by conscious failure to take reasonable measures. *Forbes*, 112 F.3d at 266.

Plaintiff’s allegations about his back pain permit an inference that he was suffering from a serious medical need in April 2018. Furthermore, it is reasonable to infer that the MSDF employees who responded to his complaints about back pain may have completely disregarded his need for a new mattress or some other intervention to address his reports of severe pain and discomfort. Therefore, his allegations are sufficient to state an Eighth Amendment claim.

Unfortunately, plaintiff still has not identified a proper defendant. The institution itself is not a person that may be sued under § 1983, *Dobbey v. Ill. Dep’t of Corr.*, 574 F.3d 443, 444 (7th Cir. 2009), and so the court must dismiss that defendant. Although plaintiff does not list any other defendants specifically, since he refers to multiple defendants the court infers that he intends to proceed against the MSDF employees that were involved in responding to his requests for medical attention for his back pain in April 2018. The court will identify these individuals as Doe defendants. Furthermore, the court will substitute the warden of MSDF as a nominal defendant, so that plaintiff can serve discovery requests

to identify the names of the individuals involved in his medical care at MSDF and amend his complaint to name as defendants the individuals involved in responding to his requests for treatment of his back pain.

This case will be scheduled for a preliminary pretrial telephonic conference before Magistrate Judge Stephen Crocker, who will explain the process by which plaintiff may use discovery to identify the names of the Doe defendants, and to amend his complaint to include their identities. Once plaintiff amends his complaint, the warden will be dismissed from this lawsuit.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Walter Leon Banks is GRANTED leave to proceed against the Doe defendants involved in his medical care at the Milwaukee Secure Detention Facility in April of 2018. The clerk of court is directed to add “Doe Defendants” to the caption of the complaint.
- 2) MSDF Warden Steven R. Johnson is added to the caption as a nominal defendant for the purpose of identifying the Doe defendants.
- 3) Plaintiff is DENIED leave to proceed on any other claims and the remaining defendants are terminated.
- 4) 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 Warden Johnson. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to the plaintiff’s complaint if it accepts service for the nominal defendant. Summons will not issue for the Doe defendants until plaintiff amends his complaint to specifically identify those defendants.
- 5) For the time being, plaintiff must send the defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendant, he should serve the lawyer directly rather than the 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 the defendants or to the defendant's attorney.

- 6) 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.
- 7) If plaintiff is transferred or released while this case is pending, it is plaintiff's obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his claims may be dismissed for his failure to prosecute him.

Entered this 28th day of September, 2021.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge