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

LARRY J. BROWN,

Plaintiff,

v.

DOUG BELLILE, DANIEL KATTENBRAKER, JOHN AND JANE DOE "SPECIAL NEEDS COMMITTEE MEMBERS," LAURA THOMAS, ALEX HILL, LISA POUILLIE, SARA DONOVAN, JOSEPH SCHMELZLE, and DANIEL PARK,

Defendants.

OPINION AND ORDER

20-cv-337-wmc

Pro se plaintiff Larry J. Brown, a patient confined civilly at Sand Ridge Secure Treatment Center ("Sand Ridge") under Wis. Stat. Chapter 980, seeks leave to proceed under 28 U.S.C. § 1983 against various center staff members for constitutional and state law violations. Because Brown is proceeding *in forma pauperis*,[1] so the court must 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

[1] Although Brown has appealed this court's orders requiring him to submit an account statement and assessing an initial, partial payment as a condition of proceeding *in forma pauperis* (dkt. #15), the Seventh Circuit Court of Appeals has ordered Brown to show cause why appellate jurisdiction exists. *Brown v. Bellile*, No. 20-2780, dkt. #4 (7th Cir. Sept. 18, 2020). Regardless, even if the Seventh Circuit were to consider the merits of his interlocutory appeal, Brown has not requested a stay in this court, and this court retains jurisdiction to decide whether Brown can proceed on the merits of his underlying claims, since that question overlaps little with the questions under possible consideration by the Seventh Circuit as to how much his initial, partial payment should be or how this court calculates such payments for civilly-detained patients like Brown. *See Kilty v. Weyerhaeuser Co.*, 758 F. App'x 530, 533 (7th Cir. 2019) ("despite an interlocutory appeal, a district court can retain jurisdiction to decide the merits of a case *and* . . . the merits decision can moot the interlocutory appeal"); *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989) (appeal of a collateral order does not disrupt the litigation in the district court); *see also Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal); *Blue Cross Blue Shield Ass'n v. Am. Express Co.*, 467 F.3d 634, 637 (7th Cir. 2006) (same).

cannot be sued for money damages. 28 U.S.C. § 1915(e)(2). Brown also filed a motion for injunctive relief. (Dkt. #3.) For the reasons that follow, the court will allow Brown to proceed against some of the named defendants, while denying his motion for injunctive relief without prejudice.

FACTUAL ALLEGATIONS[2]

A. Parties

Brown has been confined at Sand Ridge since July of 2019. He seeks leave to proceed against various of its staff, including Director Doug Bellile, Medical Director Daniel Kattenbraker, Nursing Director Laura Thomas, Physician Assistant Alex Hill, Security Officer Joseph Schmelzle, Security Officer Sara Donovan, Security Supervisor Daniel Park, Institution Unit Manager Lisa Pouillie, and the John and Jane Doe Special Needs Committee Members.

B. Accommodations at CCI

While Brown was still incarcerated at Columbia Correctional Institution ("CCI") in October of 2016, specialists at the University of Wisconsin Hospital diagnosed him with a hiatal hernia and recommended surgery. They also suggested that Brown: (1) receive 4-5 small meals a day, rather than 3 big meals, to reduce the amount digested in any one sitting; and (2) use a wedge to raise the head of his bed by 6-8 inches so that he could sleep

[2] In addressing any *pro se* litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court accepts the following facts as alleged in plaintiff's complaint or reflected in attached exhibits unless otherwise noted.

with his head elevated. In addition to these accommodations, Brown claims that CCI doctors also ordered that he receive: (1) three extra pillows to further elevate his head, (2) a nighttime snack, and (3) meals in his cell so that he could have additional time to eat. In 2017, Brown underwent fundoplication surgery to address his hernia. At follow-up appointments after surgery, Brown reported continued difficulty swallowing and esophageal pain. (Dkt. #1-1 at 3.) Brown also alleges that since his surgery, he cannot eat as fast (or as much food at one time) as others.

In 2016, Brown was also diagnosed with dermatitis, and a CCI doctor ordered him two cotton blankets to reduce itching and irritation. (Dkt. #1-3 at 4.) That diagnosis was changed in 2017 to progressive macular hypomelanosis, which causes white spots, and dermatological specialists recommended an over-the-counter benzoyl peroxide body wash and clindamycin gel or lotion, as well as UVB phototherapy treatment three times a week, if available. (Dkt. #1-3 at 2.)

C. Denial of Accommodations at Sand Ridge

Brown alleges that since being moved to Sand Ridge in 2019, he has not been allowed to eat 4-5 smaller meals a day at his own pace. While he has a wedge (dkt. ##1-4, 1-6), Brown further alleges that he is without extra pillows or cotton blankets, and he is not given a nighttime snack. Although these items are available for purchase, and Sand

Ridge will loan patients funds if necessary,[3] Brown nevertheless claims that he should be provided these items without cost because they are medically necessary and because Sand Ridge receives subsidies for patient care.

Brown first made his case on August 12, 2019, when he sent two health services requests ("HSR") to the Sand Ridge health services unit ("HSU"). In one HSR, he asked for two extra pillows, citing doctors' orders and his surgery, but claims he was told that HSU did not dispense pillows and he should address his request to the unit manager. (Dkt. #1-6.) In the other HSR, Brown asked for a nighttime snack to take with his diabetes medication because he was "hungry at night" due to his surgery. (Dkt. #1-7 at 1.) Physician Assistant Alex Hill allegedly responded incorrectly that none of Brown's medications included a recommendation it be taken with food, and instead advised Brown to order low-fat and low-acid foods from the canteen.[4]

Brown sent a follow-up HSR for pillows just two days later (August 14), in which he emphasized that the HSU was responsible for his health. (Dkt. #1-8.) Nursing Director Laura Thomas responded by directing Brown to a Special Needs Committee decision that had already denied him a daily snack and extra pillows. However, the Committee decision also notes that Sand Ridge patients can keep two pieces of fruit to eat before curfew or

[3] Attached to the complaint is a copy of Sand Ridge policy SR 648, providing "an option for patients to pay an unpaid obligation debt to the institution." (Dkt. #1-5 at 11.) Under that policy, a patient can request "an unpaid obligation agreement" for specified items and services or for other approved needs. (Dkt. #1-5 at 11-12.) To repay the debt, Sand Ridge may then deduct 50 percent of a patient's earnings every two weeks, "and from any other source of income received." (Dkt. #1-5 at 12.)

[4] As support, Brown attaches a nondefendant doctor's progress notes from April 4, 2019, indicating that CCI would provide plaintiff a bologna sandwich (Dkt. #1-7 at 2), although none of the notes reference Brown's medications nor indicate that any of his medications must be taken with food.

purchase products from the canteen. (Dkt. #1-9.) The very next day (August 15), Brown sent an HSR to a nondefendant doctor, asking why Sand Ridge staff were denying accommodations that had been ordered by his prior doctors. Defendant Thomas again responded, indicating that while Brown could file a grievance, his next medical provider appointment was scheduled for later that same week. (Dkt. #1-4.)

As suggested, Brown filed a grievance on August 18, 2019, again asking for the accommodations ordered at CCI, which were denied by the Sand Ridge civil rights facilitator, who summarized the Special Needs Committee's findings and noted that Brown not only had a job but could also request a loan (or an allowance if indigent) to purchase these items. (Dkt. #1-5 at 7.) Brown then sent an HSR to Medical Director Daniel Kattenbraker and the Committee asking why he should have to pay for a snack and pillows when these items were provided free of charge at CCI, and whether there was a medical reason to deny his request. In response, Kattenbraker simply directed Brown to the "prior response." (Dkt. #1-10 at 1.)

On October 13, 2019, Brown sent yet another HSR, this time specifically asking for two pillows "for medical reasons," to which Nursing Director Thomas suggested he file a grievance. (Dkt. #1-10 at 2.) This led Brown to send a three-page, typed HSR to Medical Director Kattenbraker and the Special Needs Committee, asking that staff be made to follow his prior doctors' recommendations. (Dkt. #1-10.) This time, Kattenbraker responded by indicating that Brown's concerns were "noted." (Dkt. #1-10 at 3-5.)

Then, on October 25, 2019, the Committee sent Brown a letter stating that his current medical chart contained no recommendation for cotton blankets and asking him

to provide supporting documentation. After Brown shared copies of his CCI special handling summary and of a CCI grievance regarding blankets, however, the Committee also denied that request.

D. Disciplinary Action

On October 12, 2019, Sand Ridge Security Officer Joseph Schmelzle further noted that Brown still had breakfast food in his room after mealtime, and when instructed to throw the food away, Brown refused. (Dkt. #1-2 at 1.) Brown claims he specifically explained to Officer Schmelzle that he could not eat quickly or very much at a time due to a prior surgery, and that he risked pain and vomiting should he eat too much at any one time, but that Schmelzle disregarded this explanation and reported Brown.

Three days later (October 15), Brown appeared at a formal hearing before a disciplinary committee that included Sand Ridge Inspection Unit Manager Lisa Pouillie, Security Officer Sara Donovan, and Security Supervisor Daniel Park. Brown alleges that he did not receive a copy of Officer Schmelzle's discipline report in advance of the hearing, and further that the Committee members (1) declined to consider relevant medical documents and (2) would not call any medical staff to testify. Following the October 15 hearing, the Committee allegedly upheld Schmelzle's report and demoted Brown for 30 days from a level C patient, who could eat in his room, to a level B patient who had to eat in the dayroom with other patients, as well as be "done eating when everyone else [was] finished, regardless of [his] medical condition." (Dkt. #1 at 5.) While Brown appealed the Committee's decision, defendant Director Doug Bellile affirmed it. (Dkt. #1-2.)

Brown saw a nondefendant nurse practitioner via telehealth session on November 12, 2019. After telling her that the Sand Ridge medical staff were refusing to adopt the accommodations previously ordered by CCI's medical staff, and that he had been "disciplined for not eating his food fast enough," the nurse practitioner sent Sand Ridge medical staff a copy of her progress notes from that visit. (Dkt. #3-1.) In particular, the nurse recommended that Brown: (1) be referred for a surgery consult; (2) be allowed more time to eat or to eat in his room; (3) eat peppermints with each meal to relax his esophageal muscle; (4) elevate the head of his bed at night, possibly with extra pillows; and (5) try to eat smaller, more frequent meals. On February 20, 2020, however, the Special Needs Committee also denied plaintiff's request for these accommodations. (Dkt. # 3-2.)

OPINION

The court understands plaintiff to be seeking leave to proceed on deliberate indifference claims against defendants Kattenbraker, Thomas, Bellile, Pouillie, Donovan, Schmelzle, Park, and Hill, along with other John and Jane Doe Special Committee Members. He also seeks leave to proceed on a Fourteenth Amendment procedural due process claim against Pouillie, Donovan, Schmelzle, and Park, and on a claim that Kattenbraker and Thomas violated his right to privacy in his medical records. The court begins with plaintiff's apparent confidential medical information and due process claims, before turning to his deliberate indifference claims, and finally addresses his request for injunctive relief. [5]

[5] Throughout his complaint, plaintiff also takes issue with SR 648, which as noted is Sand Ridge's policy of allowing patients to purchase certain items and services on credit and pay back the debt

I. Confidential Medical Information Claims

Plaintiff appears to be alleging that medical providers Kattenbraker and Thomas violated his right to privacy by allowing Director Bellile to review his medical records as part of Sand Ridge's internal grievance process. Specifically, the complaint references the Health Insurance Portability and Accountability Act of 1996, but HIPPA does not create a private cause of action or an enforceable right for purposes of a federal lawsuit, so plaintiff cannot proceed on any claim under that statute. *See Carpenter v. Phillips*, 419 F. App'x. 658, 659 (7th Cir. 2011) (collecting cases); *Kobishop v. Marinette Cnty. Sheriff's Dep't*, 2013 WL 3833990, at *2 (W.D. Wis. July 24, 2013).

To the extent plaintiff is also alleging violations of Wisconsin's State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act, Wis. Stat. ch. 51, and applicable administrative rules at Wis. Admin. Code § DHS 92.03, he *may* have state law claims that he can pursue. Although federal courts may exercise supplemental jurisdiction

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in installments. To the extent plaintiff seeks leave to proceed against Sand Ridge or its "departments" based on this policy (dkt. #1 at 11), they are not "persons" who can be sued under § 1983. *See Lapides v. Bd. of Regents*, 535 U.S. 613, 617 (2002)("we have held that a State is not a 'person' against whom a § 1983 claim for money damages might be asserted."); *Nawrocki v. Racine Cty. Jail*, No. 08-CV-96-BBC, 2008 WL 4417314, at *1 (W.D. Wis. Mar. 7, 2008) ("a building is not a proper party to a lawsuit brought under 42 U.S.C. § 1983."). To the extent plaintiff is alleging that one of the defendants promulgated a policy that is *per se* unconstitutional because medical services and related items should be free, or that Sand Ridge patients cannot be made to go into debt to the institution, he cannot proceed on such a claim because the constitution guarantees *necessary* medical care, not *free* medical care. *See Poole v. Isaacs,* 703 F.3d 1024, 1026-27 (7th Cir. 2012) (the imposition of a modest fee for medical services, standing alone, does not violate the constitution); *Martin v. Debruyn*, 880 F. Supp. 610, 615 (N.D. Ind. 1995), *aff'd* 116 F.3d 1482 (7th Cir. 1997) (a state is not forbidden from requiring that an inmate pay for his medical treatment to the extent he is able to do so, as he would have to do were he not deprived of his liberty). Regardless, as also noted, plaintiff states he has a job at Sand Ridge, preventing the court from inferring even at the pleading stage that he is unable to pay for the items and services he wants, if not in full, then by installment payments.

over some state law claims, this court would ordinarily do so only when those claims "are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). Thus, any claims that plaintiff may have under state law privacy rights with respect to disclosure of certain medical records, and whether those rights attach under the circumstances alleged here, are not implicated in any viable federal claims he alleges. Accordingly, plaintiff cannot proceed in this court on these claims either.

II. Procedural Due Process Claim

Plaintiff next alleges that his procedural due process rights were violated when defendants Bellile, Pouillie, Donovan, Schmelzle, and Park punished him "for not having control over his medical condition" without considering proffered medical evidence of that condition or providing him with a copy of Schmelzle's report before the disciplinary hearing.[6] (Dkt. #1 at 5, 9.) The Due Process Clause of the Fourteenth Amendment prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1. To prevail on such a claim, plaintiff must demonstrate that he (1) has a cognizable liberty interest, (2) has suffered a deprivation of

[6] To the extent plaintiff is also alleging that he cannot be punished because he is no longer a prisoner, "there is a vast difference between punishing an individual for a crime of which he has not been convicted and imposing sanctions for violations of institutional rules." *Clark v. Taggart*, No. 06-C-614, 2007 WL 1655160, at *3 (E.D. Wis. June 6, 2007). The Supreme Court has recognized explicitly that "'maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction'" of constitutional rights. *Id*. (quoting *Bell v. Wolfish*, 441 U.S. 520, 546 (1979)).

that interest, and (3) was denied due process. *Khan v. Bland,* 630 F.3d 519, 527 (7th Cir. 2010).

Relevant here, persons restrained under Wisconsin Chapter 980, such as plaintiff, are governed by the same standard for determining due process rights of prisoners. *Thielman v. Leean*, 282 F.3d 478, 483-84 (7th Cir. 2002). Under that standard, no liberty interest is at stake, and patients are not entitled to due process protections, unless their duration of confinement is increased or they are subjected to an "atypical and significant" hardship in relation to the ordinary incidents of confinement. *Id*. In particular, "[d]isciplinary measures that do not substantially worsen the conditions of confinement of a lawfully confined person are not actionable under the due process clause." *Miller v. Dobier*, 634 F.3d 412, 414 (7th Cir. 2011).

In this instance, plaintiff alleges that he lost the privilege of eating in his cell for a month and instead had to eat his meals in the dayroom with other patients. Plaintiff also notes that he had a limited amount of time to eat there, although the same is apparently true when eating in his room, as evidenced by the alleged basis for the disciplinary action he is challenging. Even if it were otherwise, and even though plaintiff claims he refused to eat, plaintiff does not allege that defendants (a) gave him less food in the dayroom, or (b) denied him access to additional sources of food, such as through the canteen or fruit he could save to eat later. Similarly, he does not allege suffering ill health effects from temporarily eating in the dayroom.

Based on these alleged facts, and given the gravity of the conditions and deprivations that courts have found to implicate a liberty interest, the court is highly

skeptical that having to eat his meals with other patients for a month, even within a limited amount of time, represented a significant change that substantially worsened plaintiff's confinement conditions. *See, e.g.*, *Beverati v. Smith*, 120 F.3d 500, 502 (4th Cir. 1997) (administrative segregation for six months with vermin, human waste, flooded toilet, unbearable heat, no outside recreation, no educational or religious services, and less food was not so atypical as to impose significant hardship); *Wilkinson v. Austin*, 545 U.S. 209, 214-24 (2005) (prisoners' liberty interests implicated when placed in segregation depriving them of virtually all sensory stimuli or human contact for an indefinite period of time); *Senty-Haugen v. Goodno,* 462 F.3d 876, 886 n. 7 (8th Cir. 2006) (civilly confined patient's loss of "access to the canteen and outside vendors and computer privileges . . . [were] *de minimis* restrictions with which the Constitution is not concerned"); *Gillis v. Litscher*, 468 F.3d 488, 490-95 (7th Cir. 2006) (fourteen day placement in segregation may have implicated liberty interest where inmate was denied sensory input, had no privileges, had to sleep naked on concrete slab). In the absence of a protected liberty interest, "the state is free to use any procedures it chooses, or no procedures at all." *Montgomery v. Anderson,* 262 F.3d 641, 644 (7th Cir. 2001).

Moreover, the gravamen of this procedural due process claim is that the disciplinary process and hearing were both unfair *because* the defendants punished plaintiff for "having a medical condition." (Dkt. #1 at 5, 9.) As discussed below, this is also the basis for plaintiff's deliberate indifference claim against these same defendants for the same alleged conduct. Accordingly, this claim in this case appears to be duplicative of, and in any event is more accurately construed as, one of deliberate indifference to plaintiff's alleged serious

medical needs. Where "a constitutional claim is covered by a specific constitutional provision . . . the claim must be analyzed under [that] standard." *See United States v. Lanier*, 520 U.S. 259, 272 n. 7 (1997). Accordingly, the court will analyze plaintiff's allegations against these defendants related to their alleged conduct during this disciplinary process under the lens of deliberate indifference, and allow him to proceed on that claim alone for the reasons that follow.

III. Deliberate Indifference Claims

Plaintiff further claims that certain defendants' refusal to consider or to accommodate his chronic health issues amounts to deliberate indifference. As a civilly committed detainee, plaintiff's claims fall under the Fourteenth Amendment's Due Process Clause. *Sain v. Wood*, 512 F.3d 886, 893 (7th Cir. 2008); *Bevan v. Rustad*, No. 19-cv-615-wmc, 2020 WL 777894, at *1 (W.D. Wis. Feb. 18, 2020). To state a claim that defendants were deliberately indifferent to a serious medical need in violation of the Fourteenth Amendment, plaintiff must allege facts suggesting that: (1) he suffered from an objectively serious medical condition; (2) defendants acted purposefully, knowingly, or recklessly with respect to the consequences of their actions; and (3) defendants' conduct was objectively unreasonable. *Hardeman v. Curran*, 933 F.3d 816, 827 (7th Cir. 2019) (Sykes, J., concurring); *see also Kingsley v. Hendrickson*, 576 U.S. 389, 395-97 (2015); *Miranda v. Cty. of Lake*, 900 F.3d 335, 352-53 (7th Cir. 2018). While it is not enough for plaintiff to prove negligence or even gross negligence, neither is he required to prove the defendants' subjective awareness that the conduct was unreasonable. *Miranda*, 900 F.3d at 353. For purposes of this screening order, the court will assume that plaintiff's alleged

chronic, gastroesophageal and dermatologic issues constitute serious medical needs. *See, e.g.*, *Rowe v. Gibson*, 798 F.3d 622, 627 (7th Cir. 2015) (GERD may present serious medical condition); *Staffa v. Pollard*, No. 13-cv-5, 2015 WL 5023931, at *5, 16 (E.D. Wis. Aug. 15, 2015) (assuming that plaintiff's skin conditions including dermatitis and bacterial folliculitis were serious medical needs). This then leaves an examination of the individual defendants' alleged conduct.

A. Defendants Pouille, Donovan, Park, Schmelzle and Bellile

Starting with the October 2019 discipline incident, plaintiff alleges that defendants Pouillie, Donovan, Park and Schmelzle punished him for not being able to finish eating breakfast by the end of mealtime, despite his explanation to Schmelzle and documentation to the Disciplinary Committee members that his medical condition forces him to eat slowly or risk pain and regurgitation. In allegedly declining to make any allowances for plaintiff's medical condition in considering his rule violation, a reasonable trier of fact could at least conceivably infer deliberate indifference on the part of these defendants. Of course, this assumes that the defendants had the authority to modify the rules (particularly Schmelzle), and that defendants were not justifiably relying on the medical judgments of Sand Ridge medical staff. *See Berry v. Peterman*, 604 F.3d 435, 440 (7th Cir. 2010) ("[T]he law encourages non-medical security and administrative personnel at the jails and prisons to defer to the professional medical judgments of the physicians and nurses treating the prisoners in their care without fear of liability for doing so."). It also assumes defendants were unaware of any way for plaintiff to solve any need for food outside meal times. But these are questions of fact for another day. For now, viewing the allegations in the light

most favorable to plaintiff, these defendants arguably responded unreasonably to plaintiff's chronic gastroesophageal issues by punishing him for failing to do something that his medical condition prevented him from doing. Accordingly, plaintiff may proceed against these defendants on a claim for deliberate indifference. *See Whiteside v. Morgan*, No. 11-C-1079, 2012 WL 1933703, at *2 (E.D. Wis. May 29, 2012) (characterizing plaintiff's allegation that "he was improperly punished for failing to do what his medical condition prevented him from doing" as stating a claim for deliberate indifference to a serious medical need).

Similarly, plaintiff may proceed on his claim against defendant Bellile, to whom plaintiff appealed his sanction on October 16, 2019, and who plaintiff alleges declined to intervene and end the allegedly improper punishment. In particular, the relevant documents attached to the complaint indicate that plaintiff made note of his medical condition, but Bellile affirmed plaintiff's demotion to level B on October 22, 2019 (dkt. #1-2 at 3) before his month-long punishment ended. Moreover, although it appears that plaintiff may have been promoted back up to level C early on October 23 (*see* dkt. #1-2 at 9), it is unclear whether Bellile had a hand in or was aware of that decision, or whether he took any other action in response to plaintiff's complaint.

While individuals cannot be held liable under § 1983 merely for their supervisory role over others, *Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000), for purposes of screening only, the court will infer that Bellile was aware of plaintiff's medical condition and the allegedly ongoing improper punishment and failed to act despite being in a position to do so as director. Factfinding may well reveal otherwise, but for now, given the lenient

pleading standard for a *pro se* litigant, *Haines,* 404 U.S. at 521, the court will also allow plaintiff to proceed past the screening stage against Bellile on this deliberate indifference claim.[7]

E. Defendants Hill, Thomas, Kattenbraker and the Doe Special Needs Committee Members

Plaintiff's remaining deliberate indifference allegations involve defendants Hill, Thomas, Kattenbraker, and the John and Jane Doe Special Needs Committee Members. As for Hill, plaintiff's only contention is that the Physician's Assistant denied plaintiff's HSR for a nighttime snack based on the mistaken assertion that plaintiff had not been prescribed a medication to be taken with food and the plaintiff's ability to purchase certain types of food from the canteen regardless. But there is no allegation that Hill was ever aware of his mistaken belief or any possible ramifications, other than that plaintiff could get hungry at night. Indeed, as noted, the document plaintiff references in support of his claim against Hill does *not* list medications or indicate that any of his medications must be taken with food. (Dkt. # 1-7 at 2.) Even if plaintiff is correct that Hill misread plaintiff's medical record, "[s]uch negligence would be insufficient to support liability under the

[7] In the "Cause of Actions" section of the complaint, plaintiff further suggests that defendant Kattenbraker failed to prevent plaintiff's medical condition from being used as a "tool" for punishment and "gave the green light to security staff to punish" plaintiff. (Dkt. #1 at 9, 11.) However, because neither the factual allegations nor the documents attached to the complaint support an inference that Kattenbraker was personally involved in this specific disciplinary incident or plaintiff's appeal from it, plaintiff cannot proceed against this defendant on this claim. *See Mitchell v. Kallas*, 895 F.3d 492, 498 (7th Cir. 2018) (personal involvement is a prerequisite to liability under 42 U.S.C. § 1983); *see also Burks v. Raemisch*, 555 F.3d 592, 593-94 (7th Cir. 2009) ("[l]iability depends on each defendant's knowledge and actions, not on the knowledge or actions of persons they supervise."). Of course, plaintiff may seek to amend his complaint if he has *evidence* that Kattenbraker was somehow personally involved.

Fourteenth Amendment, even though it might support state-law liability." *Miranda*, 900 F.3d at 354. Without factual allegations supporting an inference that Hill acted "acted purposefully, knowingly, or perhaps even recklessly," *id.* at 353, plaintiff may not proceed on his claim against defendant Hill.

In contrast, plaintiff may proceed past screening against defendant Thomas. According to plaintiff, the Nursing Director responded inadequately to three HSRs for pillows and 4-5 smaller daily meals. In his August 14, 2019, HSR, plaintiff specifically noted that he had surgery and that this his head had to be elevated when he slept. (Dkt. #1-8.) He made a similar request on August 15, adding that he should be eating smaller, more frequent meals; and he did so again on October 13. (Dkt. ##1-4, 1-10 at 2.) In each of her responses as the Nursing Director, Thomas declined to take action in reliance on the Special Needs Committee's August 14, 2019, denial of plaintiff's accommodations request, directing instead that plaintiff file a grievance. Fact-finding may very well reveal that Thomas's reliance was justified, but for purposes of screening, a trier of fact might reasonably infer based on Thomas's position that she was familiar with plaintiff's medical records and condition, or should have been, and that she could have intervened on his behalf. Thus, she arguably acted with deliberate indifference in repeatedly refusing to follow up or act on his HSRs indicating that the Committee decision had *not* resolved plaintiff's medical issues.

That leaves defendant Medical Director Kattenbraker and the Doe defendants, who plaintiff alleges have all refused his repeated requests for medically necessary accommodations with little or no explanation. That these defendants allegedly refused to

act despite their knowledge of plaintiff's medical history and the recommendations of plaintiff's prison doctors, who were University of Wisconsin specialists, and the nurse practitioner with whom plaintiff consulted *after* arriving at Sand Ridge, is at least arguably objectively unreasonable. Accordingly, the facts as pleaded are sufficient at this stage to state a claim for deliberate indifference, and plaintiff may proceed against Kattenbraker and the Doe defendants on this Fourteenth Amendment claim.[8]

IV. Motion for Injunctive Relief

Finally, the court will deny without prejudice plaintiff's motion for preliminary injunctive relief related to his claims. (Dkt. #3.) In essence, plaintiff would like the court to order Sand Ridge to provide the items and accommodations he received at CCI to help relieve his gastroesophageal and dermatologic symptoms. To succeed on his motion for preliminary injunction, which is a more demanding inquiry than that conducted when screening a complaint, 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. *See Lambert v. Buss*, 498 F.3d 446, 451 (7th Cir. 2007).

As for plaintiff's request that the court order Sand Ridge to suspend SR 648, plaintiff cannot proceed on a claim that this policy is *per se* unconstitutional for the reasons stated above. Such a defect undermines *any* chance of success on the merits of such a

[8] At the preliminary pretrial conference, Magistrate Judge Stephen Crocker will explain to plaintiff how to use discovery requests to identify the Doe defendants and to amend the complaint to identify them by name. Plaintiff need not wait for the pretrial conference to amend, however, should he learn the name(s) of any Doe defendants on his own before that conference. Regardless, he should work with defense counsel to assign actual names to the appropriate defendants as soon as practical.

claim, as well as the court's authority to order injunctive relief related to this policy in this lawsuit. More to the point, the court would only consider injunctive relief if plaintiff's allegation that his "life is in jeopardy" was supported by specific factual allegations demonstrating the likelihood of *immediate* and *irreparable* harm. (Dkt. #3 at 3.)

Here, plaintiff repeatedly emphasizes that his prior doctors recommended, and he received without cost, certain accommodations and items at CCI. He also repeatedly hillasserts that he is suffering "irreparable harm." Yet plaintiff neither explains how his gastroesophageal and dermatologic conditions have worsened nor articulates factual allegations beyond a general risk of pain and regurgitation in support of a showing that he is *likely* to suffer serious, imminent harm without additional time to eat smaller, more frequent meals in his room, cotton blankets, a nighttime snack, and two extra pillows. Notably, plaintiff indicates in two HSRs that he has a wedge he can use to raise the head of his bed. (Dkt. ##1-4, 1-6.) Moreover, plaintiff is permitted until curfew to keep two pieces of fruit in his room, has access to the canteen and an income to purchase additional needs, and does not allege that he cannot afford to pay for the items he wants; rather, his filings suggest that he is unwilling to do so, even by installment, or to take out a loan. Accordingly, plaintiff's motion thus falls short of demonstrating imminent, irreparable harm requiring court intervention on this record.[9]

[9] Again, plaintiff may supplement the record and renew his motion if evidence supports it.

ORDER

IT IS ORDERED that:

1) Plaintiff Larry J. Brown is GRANTED leave to proceed on Fourteenth Amendment deliberate indifference claims against defendants Doug Bellile, Laura Thomas, Daniel Kattenbraker, Lisa Pouillie, Sara Donovan, Joseph Schmelzle, Daniel Park, and the John and Jane Doe Special Needs Committee Members.

2) Plaintiff is DENIED leave to proceed on any other claim and against any other defendant. Accordingly, defendant Alex Hill is DISMISSED from this lawsuit.

3) Plaintiff's motion for preliminary injunctive relief (dkt. #3) is DENIED without prejudice.

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 the state defendants. 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 plaintiff's complaint if it accepts service for the defendants.

5) 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 the defendants' 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 his obligation to inform the court of his new address. If he fails to do this and defendants or the court is unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 3rd day of December, 2020.

BY THE COURT:
/s/
WILLIAM M. CONLEY
District Judge