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

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EDWARD MAX LEWIS,

Plaintiff,

v.

LEON STENZ, *et al.*,

Defendants.

OPINION AND ORDER

14-cv-446-wmc

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This case is on remand to screen *pro se* plaintiff Edward Max Lewis's complaint as required by 28 U.S.C. § 1915A. Lewis alleges in his complaint that staff at the Forest County Jail subjected him to inhumane conditions of confinement in 2003 and 2004 in violation of his rights under the Fourteenth Amendment, Americans with Disabilities Act and state law. On March 30, 2014, this court dismissed Lewis' claims as time barred, but the Seventh Circuit reversed, concluding that a dismissal of Lewis' claims on timeliness grounds was premature. *Lewis v. Stenz*, 2016 WL 1028000, 637 Fed. Appx. 943 (7th Cir. Mar. 15, 2016). The case was remanded for further proceedings.[1]

Although this court previously screened Lewis' complaint, the court addressed only the statute of limitations issue and did not evaluate whether his allegations were sufficient to state a claim against the named defendants; nor did the court identify the specific nature of Lewis' claims. *See id.* ("The district court . . . did not examine whether [Lewis] states a claim against the defendants involved in his pretrial detention.") The court now undertakes that

[1] Even so, the court of appeals affirmed dismissal with respect to defendants Leon Stenz, Charles Simono, John Dennee and Steve Weber, on the grounds that Lewis' claims against those defendants were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), and failed to allege personal involvement. *Lewis*, 2016 WL 1028000, -- Fed. Appx. -- (7th Cir. Mar. 15, 2016). This court will not address those claims or defendants further.

task under 28 U.S.C. § 1915A. After reviewing Lewis' complaint, the court concludes that he may proceed on several, but not all, of the remaining claims identified in his complaint.

## ALLEGATIONS OF FACT

On October 26, 2003, Lewis was arrested and placed in the Forest County Jail. At that time, Lewis suffered from mental health issues that caused seizures, "blackouts" and "fogouts." Before his arrest, Lewis had been employed at the Forest County Potawatomi Health and Wellness Center, where defendant Betty Thunder was his supervisor. Lewis alleges that Thunder, who was also the Behavioral and Mental Health Supervisor at the jail, visited him on October 27, 2003, and observed that he was suicidal, but failed to inform jail staff. The following day, Lewis was placed in a segregation cell, where defendant Leslie Hrouda, a nurse at the jail, noted that Lewis suffered from stress and a fever and that he had been prescribed Paxil.

On November 6, 2003, Hrouda further noted that plaintiff was hearing voices. She then tried to contact a psychiatrist at the jail, defendant Donald Stonefeld, as well as an employee of the Forest County Potawatomi Health and Wellness Center. Hrouda was told that Stonefeld could not see Lewis because of a "conflict of interest," apparently arising out of Stonefeld having worked with Lewis at the Health and Wellness Center. On November 7, Hrouda noted that Rhinelander Hospital and the Northwoods Guidance Center were also contacted for an emergency placement for Lewis, but that there were no beds available. On November 10, Hrouda spoke about Lewis' condition with the Forest County Jail Administrator, defendant George Stamper, but Stamper decided to do nothing for Lewis until the state circuit court had evaluated him for competency in his criminal case.

After another full week, Hrouda told Stamper on November 18, 2003, that Lewis was now experiencing body tremors and blackouts, as well as continuing to hear voices. Hrouda then prescribed Tylenol and told Lewis to lie down. On or around November 21, Stonefeld approved a mild anti-depressant for Lewis. On November 28, Hrouda noted that Lewis was still hearing voices. Sometime between November and December, Lewis tried to commit suicide.

During January 2004, Lewis notified Hrouda that he continued to hear voices, was experiencing paranoia and thought people were watching him. Sometime that month, Lewis further claims that jail staff (defendant John Doe) entered his cell because he perceived a suicide threat. Doe then allegedly forced Lewis to the floor and caused his navel to be torn open.

Between March and June 2004, Lewis was placed in segregation numerous times in response to his medical issues. He was also accused of faking his condition, was denied clothing and a blanket, had to shower in cold water, and was denied any form of activity. He was further injured after falling and hitting his head during a seizure. Nevertheless, jail administrator Stamper allegedly refused to take steps to improve his condition.

In 2004, Lewis was sent to prison, where he was diagnosed with major depressive order with psychotic features and PTSD. He later was diagnosed with a form of epilepsy that caused seizures and was sent to Wisconsin Resource Center for treatment.

Lewis has named the following individuals as defendants: George Stamper, administrator of the Forest County Jail; Lesli Hrouda, a nurse at the jail; Richard Brandner, physician at the jail; Donald Stonefeld, a psychiatrist at the jail; Betty Thunder, the Behavioral and Mental Health Supervisor at the jail; Roger Wilson, the Forest County Sheriff

in 2003 and 2004; Linda Helmick, Director of the Forest County Potawatomi Health and Wellness Center; John Does jail staff, state employees, and other unknown individuals; Wisconsin Mutual Insurance Corporation, insurer for the City of Crandon; and League of Wisconsin Municipalities Mutual Insurance, insurer for Forest County.

## OPINION

Lewis' claims may be organized into four categories: (1) failure to provide medical and mental health care in violation of the Fourteenth Amendment; (2) failure to provide humane living conditions; (3) excessive force; and (4) disability discrimination.

### I. Denial of Medical and Mental Health Care

Plaintiff alleges in his complaint that he was being held at the Forest County Jail as a pretrial detainee, which means that his claims regarding conditions of confinement are governed by the due process clause of the Fourteenth Amendment. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2475 (2015); *Rice ex rel. Rice v. Correctional Medical Services*, 675 F.3d 650, 664 (7th Cir. 2012). For purposes of screening, however, the Seventh Circuit has applied the same standard to medical care claims under both the Eighth Amendment and Fourteenth Amendment. *Smego v. Mitchell*, 723 F.3d 752 (7th Cir. 2013).

A jail official may violate a detainee's constitutional right to medical and mental health care if the official is "deliberately indifferent" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (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). The condition does not have to be life threatening. *Id.* A medical need may be serious if it

"significantly affects an individual's daily activities," *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, *Cooper v. Casey*, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, *Farmer v. Brennan*, 511 U.S. 825 (1994).

"Deliberate indifference" means that the officials are aware that the prisoner needs medical treatment, but are disregarding the risk by consciously failing to take reasonable measures. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). Thus, under this standard, plaintiff's claim for denial of medical and mental health care in violation of the U.S. Constitution has three elements:

(1) Did plaintiff need medical treatment?

(2) Did defendants know that plaintiff needed treatment?

(3) Despite their awareness of the need, were defendants consciously failing to take reasonable measures to provide the necessary treatment? *Id*.

Plaintiff's allegations that he suffered from a seizure disorder, suicidal thoughts and other mental health issues, and that he received inadequate treatment for them, support an inference that he had serious medical needs that were disregarded by at least some jail staff. The question remains which defendants may be liable for failing to provide plaintiff with adequate medical and mental health care based on the allegations in his complaint.

Plaintiff's allegations are certainly sufficient to state a denial of medical care claim against defendants Hrouda, Stonefeld and Thunder, all of whom are medical professionals. Plaintiff alleges that they were all aware of his medical and mental health needs, but refused to take reasonable steps to help him. Instead, they allegedly provided limited consultations and gave him unhelpful medications, like Tylenol and an ineffective antidepressant.

As for Stamper, the Forest County Jail administrator, plaintiff alleges that he was aware of plaintiff's medical and mental health issues, but directed jail staff to do nothing while the state circuit court considered plaintiff's competency. Stamper also allegedly refused to provide plaintiff help after plaintiff notified him that he was struggling in segregation. Accordingly, plaintiff may proceed with his claims against Stamper as well.

Plaintiff may also proceed with state law negligence or medical malpractice claims against Hrouda, Stonefeld, Thunder and Stamper. To prevail on a claim for medical negligence in Wisconsin, a plaintiff must prove the following four elements: (1) a breach of (2) a duty owed (3) that results in (4) injury or injuries, or damages. *Paul v. Skemp*, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865 (2001). Based on plaintiff's allegations that these defendants either ignored his requests for treatment, or provided improper or ineffective treatment, or in Stamper's case inhibited others from providing treatment, plaintiff will be permitted to proceed on a negligence claim against them as well.

Plaintiff's allegations are not sufficient, however, to state a claim against any other defendant for violation of his right to adequate medical and mental health care. With respect to the other medical professional defendants, Richard Brandner and Linda Helmick, plaintiff includes no allegations in his complaint that these defendants were personally responsible for any constitutional violations. Plaintiff has not even alleged that these defendants were aware of plaintiff's condition, nor in any position to provide him with the care he needed. Plaintiff also has not alleged that any of the other named defendants were involved in his treatment or aware of his medical needs.

This deficiency in plaintiff's pleadings is dispositive, because "an individual must be personally responsible for a constitutional deprivation in order to be liable" under § 1983.

*Childress v. Walker*, 787 F.3d 433, 439 (7th Cir. 2015). A supervisor, such as Helmick, Brander or Wilson, the sheriff, may be liable if she knew about unconstitutional "conduct and facilitate[d] it, approve[d] it, condone[d] it, or turn[ed] a blind eye for fear of what [she] might see." *Matthews v. City of East St. Louis*, 675 F.3d 703, 708 (7th Cir. 2012) (citation omitted). Additionally, a supervisor might be liable for flawed policies or deficient training, over which the supervisor had control, if the policies or training amount to deliberate indifference to the rights of the persons affected by the policies or inadequate training. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989).

Here, plaintiff's allegations do not permit an inference that any of the other defendants -- besides Hrouda, Stonefeld, Thunder and Stamper -- approved, condoned, or turned a blind eye to the denial of adequate medical care. He also has not alleged that any of the other defendants were responsible for reviewing or second-guessing the treatment decisions by jail medical staff, nor that any other defendant was aware that policies relating to medical care or inmate placement could result in inmates suffering a substantial risk of serious harm. Without such allegations, plaintiff may not proceed with medical care claims against the other defendants.

## II. Inhumane Living Conditions

Plaintiff next alleges that defendants violated his right to humane living conditions by forcing him to take a cold shower, and then placing him in a cold and damp, non-padded segregation cell without any clothes or a blanket, putting him at great risk to injury, including from his seizure condition. Jail officials violate the constitution if they are "deliberately indifferent to adverse conditions that deny 'the minimal civilized nature of life's necessities.'" *Farmer*, 511 U.S. at 825. "[C]onditions of confinement, even if not individually serious

enough to work constitutional violations, may violate the Constitution in combination when they have 'a mutually enforcing effect that produces the deprivation of a single, identifiable human need.'" *Budd v. Motley*, 711 F.3d 840, 842-43 (7th Cir. 2013) (citation omitted).

Here, plaintiff's allegations that he was held in a cold, damp and unsafe cell, in light of his seizure condition and mental health issues, are sufficient to state a claim that he was subjected to unconstitutional conditions of confinement and that certain defendants failed to take steps to help him. Accordingly, plaintiff may proceed against defendant Stamper on this claim, as he alleges that Stamper was aware of his conditions of confinement. He may also proceed against the John Doe jail staff, who he claims were responsible for his placement in segregation and aware of the harsh conditions.

### III. Excessive Force

Plaintiff also seeks leave to proceed on a claim that a John Doe jail deputy used excessive force against him when he entered his cell, took plaintiff to the ground and caused a tear in plaintiff's navel. Plaintiff alleges that Doe used more force than was necessary to intervene in his suicidal actions. To succeed on an excessive force claim under the Fourteenth Amendment, a plaintiff must show "that the force purposely or knowingly used against him was objectively unreasonable." *Kingsley v. Hendrickson*, 135 S.Ct. 2466, 2473 (2015). Relevant factors to be considered include "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting." *Id.* Plaintiff's allegations are sufficient at this stage to state a claim that Doe's

decision to force plaintiff to floor was objectively unreasonable force under the circumstances. Accordingly, he may proceed with his excessive force claim against the John Doe deputy.[2]

## IV. Disability Discrimination Claim

Plaintiff's final claim is that he was discriminated against by Forest County Jail Staff because of his disabilities, in violation of the Americans with Disabilities Act. In particular, he alleges that several other inmates with disabilities were provided with accommodations for their disabilities, received outside medical treatment, and were not placed in segregation, while he received none of the accommodations or treatment that he needed.

To state a claim under the ADA, plaintiff must allege that (1) he is a qualified person (2) with a disability and (3) the Forest County Jail denied him access to a program or activity because of his disability. *Jaros v. Illinois Dep't of Corr.*, 684 F.3d 667, 672 (7th Cir. 2012). It is a close call whether plaintiff has stated a claim for disability discrimination. On the one hand, his allegations do not necessarily suggest that he was denied access to a program or service of the jail because of his disability; rather, they suggest that he was denied proper medical treatment due to his providers' and jail staff's poor decisions. A prison does not violate the ADA by "simply failing to attend to the medical needs of its disabled prisoners." *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996). *See also Barrett v. Wallace*, 570 Fed. Appx. 598, 600 (7th Cir. 2014) (plaintiff had no ADA claim where his claims related to the failure to properly treat mental health issues and he did not allege denial of treatment *because of* his mental illness). If plaintiff is simply alleging that he was denied adequate medical and

[2] Admittedly, this claim is sufficiently distinct from his treatment and condition claims as to other defendants to consider severing, but the court will treat the claim as sufficiently similar to justify its inclusion at least at the screening stage.

mental health care, his claims are properly brought as Fourteenth Amendment denial of medical care claims, not as claims for disability discrimination.

On the other hand, plaintiff does allege that he was intentionally discriminated against and denied access to certain accommodations in the jail *because of* his disability. Although the court is skeptical that plaintiff can succeed on an ADA claim, the court will allow him to proceed with his claim at this time. He will be permitted to proceed against Stamper in his official capacity as jail administrator.

## V. Claims Against Insurance Companies

Plaintiff has named Wisconsin Mutual Insurance Corporation ("WMIC"), insurer for the City of Crandon, and League of Wisconsin Municipalities Mutual Insurance ("League"), insurer for Forest County, as defendants. None of his allegations support an inference that either insurer, or their insureds, violated plaintiff's constitutional rights, meaning that the insurers' connection to the lawsuit arises solely from their role in insuring Forest County and the City of Crandon.

In Wisconsin, the ability to file a direct action against an insured's insurance carrier is authorized by Wis. Stat. § 632.24. That statute makes the insurer liable for injuries caused by negligent action of its insured, up to the amounts stated in the policy. Here, plaintiff will be granted leave to proceed on negligence claims against defendants Hrouda, Stonefeld, Thunder and Stamper, all alleged to be employees at the Forest County Jail. For purposes of screening at least, the court will assume that these defendants are covered under Forest County's policy through the League, and, therefore, will permit plaintiff to proceed with a direct action against the League. None of plaintiff's allegations, however, support an

inference that any defendant is an employee of the City of Crandon or insured by WMIC. Accordingly, WMIC will be dismissed.

## ORDER

IT IS ORDERED that:

1. Plaintiff Edward Max Lewis is GRANTED leave to proceed on his claims that:

    - George Stamper, Donald Stonefeld, Betty Thunder and Lesli Hrouda failed to provide him with adequate medical and mental health in violation of the Fourteenth Amendment and state negligence law;

    - Stamper and John Doe jail staff subjected him to inhumane conditions of confinement, in violation of the Fourteenth Amendment;

    - John Doe deputy used excessive force against him in violation of the Fourteenth Amendment;

    - His rights under the ADA were violated while he was held at the Forest County Jail; and

    - the League of Wisconsin Municipalities Mutual Insurance is liable for the negligence of George Stamper, Donald Stonefeld, Betty Thunder and Lesli Hrouda under Wis. Stat. § 632.24.

2. The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon these individual defendants, although summons will not issue against the John Doe defendants until plaintiff discovers the real names of these parties and amends his complaint accordingly.

3. Plaintiff is DENIED leave to proceed on all other claims. Defendants Roger Wilson, Linda Helmick, Richard Brandner and Wisconsin Mutual Insurance Corporation are DISMISSED.

4. 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.

5. 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.

6. 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 this 30th day of November, 2016.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge