

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

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KERRY L. STEVENSON,

Plaintiff,

v.

KARL M. HOFFMAN,

Defendant.

OPINION and ORDER

Case No. 17-cv-490-wmc

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*Pro se* plaintiff Kerry Stevenson contends that defendant Karl Hoffman's treatment of his head injury violated his Eighth Amendment rights. Because Stevenson was incarcerated at the time he filed it, the court must screen his complaint pursuant to 28 U.S.C. § 1915A. After reviewing the complaint, the court concludes that Stevenson may proceed with his deliberate indifference claim against Hoffman under the Eighth and Fourteenth Amendments.

ALLEGATIONS OF FACT<sup>1</sup>

During the relevant time period, Stevenson was incarcerated at the New Lisbon Correctional Institution ("NLCI"). Defendant Hoffman was employed by the Wisconsin Department of Corrections ("DOC") at the time.

In 2012, Stevenson underwent a right side craniotomy after a serious motorcycle crash. Afterwards, he began experiencing seizures and was diagnosed with trauma induced epilepsy.

On March 9, 2015, Stevenson suffered a seizure while incarcerated at NLCI. Dr. Hoffman, who was aware of Stevenson's medical history, learned about the seizure, but

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<sup>1</sup> 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 assumes the facts above based on the allegations in Stevenson's complaint.

apparently took no action. Shortly after that seizure, Stevenson noticed a mass on the right side of his skull. Apparently Hoffman learned about the mass but again took no action. It is not clear exactly when Hoffman learned about the mass, but Stevenson alleges that Hoffman “ignored the mass in Stevenson’s head for many weeks.” (Compl. (dkt. #1) at 3.)

Eventually, on April 27, 2015, Stevenson was sent to the emergency room at a local hospital to be evaluated by a neurosurgeon. In May of 2015, he was diagnosed with a right frontal scalp abscess and underwent a right side craniectomy to remove the infected bone flap and epidural abscess drainage.

Between the time that Hoffman learned about the mass in Stevenson’s head and when he received treatment in May of 2015, Stevenson claims he suffered intense pain and discomfort. He also claims permanent injury as a result of the delay in treatment of the mass in his skull.

## OPINION

Plaintiff is seeking leave to proceed on an Eighth Amendment deliberate indifference claim against Hoffman. A prison official may violate the Eighth Amendment if the official is “deliberately indifferent” to a “serious medical need.” *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). “Serious medical needs” include: (1) conditions that are life-threatening or that carry 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” means that the officials are aware that the prisoner needs medical

treatment, but disregard that risk by consciously failing to take reasonable measures. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

Moreover, allegations of delayed care -- even a delay of just a few days -- may violate the Eighth Amendment if the delay caused the inmate's condition to worsen or unnecessarily prolonged his pain. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010) (“[T]he length of delay that is tolerable depends on the seriousness of the condition and the ease of providing treatment.”) (citations omitted); *Smith v. Knox County Jail*, 666 F.3d 1037, 1039-40 (7th Cir. 2012); *Gonzalez v. Feinerman*, 663 F.3d 311, 314 (7th Cir. 2011).

Under this standard, plaintiff's claim must allege three elements:

1. Did plaintiff objectively need medical treatment?
2. Did defendants know that plaintiff needed treatment?
3. Despite their awareness of the need, did defendants consciously fail to take reasonable measures to provide the necessary treatment?

Here, plaintiff's allegations certainly support an inference that he was suffering from a serious medical need in March of 2015, having suffered a seizure and noticed a mass formed on his skull. While the complaint does not include details about precisely when Hoffman learned about the mass on plaintiff's skull, it is reasonable to infer at the pleading stage that Hoffman learned about plaintiff's condition at some point in March or early April, having alleged that Dr. Hoffman learned about the mass “shortly after” plaintiff's March seizure and knew about the mass for several weeks before plaintiff was sent to the hospital. Further, the fact that plaintiff did not receive medical attention for the mass on his skull until April 27 permits an inference that Hoffman failed to take reasonable measures to provide plaintiff with needed treatment. Indeed, plaintiff alleges that the delay in receiving treatment for the abscess

caused not only intense pain, but also permanent injury. Accordingly, plaintiff will be permitted to proceed against Hoffman on an Eighth Amendment deliberate indifference claim.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Kerry Stevenson is GRANTED leave to proceed on an Eighth Amendment deliberate indifference claim against defendant Karl Hoffman.
- (2) The clerk of court shall issue summonses and forward them to plaintiff's counsel for service.
- (3) If plaintiff is transferred or released while this case 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, then his case may be dismissed for his failure to prosecute it.

Entered this 28th day of March, 2018.

BY THE COURT:

/s/

WILLIAM M. CONLEY  
District Judge