

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

REO L. COVINGTON,

Plaintiff,

v.

OPINION and ORDER

NANCY BOWENS, PATRICK MURPHY, HEINRICH
ROERHICH and JANE DOE/RN BERMIER,

23-cv-166-wmc

Defendants.

Plaintiff Reo Covington, who is representing himself, has filed a lawsuit alleging that he was denied insulin at Oshkosh Correctional Institution. He has sued defendants for violations of the Eighth Amendment. Under 28 U.S.C. § 1915(e)(2) and § 1915A, this court must screen and dismiss any claim that is legally frivolous or malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. When screening a complaint drafted by a non-lawyer, the court applies a less stringent standard. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). However, Covington must still allege enough facts to show that he is plausibly entitled to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). For the reasons explained below, the court will allow Covington's claims to proceed against some defendants but will dismiss others. Covington also moved for the court's assistance in recruiting counsel. The court will deny that motion.

OPINION

Plaintiff alleges that he is diabetic and that Health Services Unit staff at Oshkosh Correctional Institution refused to provide him insulin on December 13 or 14, 2017. As a result, he suffered an acute episode of diabetic ketoacidosis and was hospitalized.

Plaintiff's allegations implicate the Eighth Amendment of the United States Constitution, which prohibits "cruel and unusual punishment" and prohibits prison officials from acting with "deliberate indifference" to prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976); *Pyles v. Fahim*, 771 F.3d 403, 408 (7th Cir. 2014). A prisoner states an Eighth Amendment claim based on deficient medical care by alleging that (1) he has an objectively serious medical condition; and (2) defendants acted with deliberate indifference to that condition. *Arnett*, 658 F.3d at 750; *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). The first element, an objectively serious medical condition, is one that a doctor recognizes as needing treatment or one for which the necessity of treatment would be obvious to a lay person. *Pyles*, 771 F.3d at 412. Plaintiff's allegations about his diabetes show that he has an objectively serious medical need.

The second element -- an official's deliberate indifference -- relates to the official's subjective state of mind. *Arnett*, 658 F.3d at 750. A plaintiff must allege that an official knew of and disregarded a substantial risk of harm. *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016); *Gevas v. McLaughlin*, 798 F.3d 475, 480 (7th Cir. 2015). Plaintiff's allegations are sufficient to state Eighth Amendment claims against defendants Dr. Patrick Murphy and Nurses Bowen and Doe/Bermier, who he says were responsible for providing him medical care

but failed to give him insulin. His allegations suggest that these three defendants were aware of his serious medical need but failed to provide him with appropriate treatment.¹

However, plaintiff's allegations are insufficient to state a claim against defendant Heinrich Roerhich, whom plaintiff says was the prison psychiatrist responsible for providing mental health care. Plaintiff does not explain why providing insulin would have been Roerhich's responsibility or how he was involved in the denial of plaintiff's insulin. Therefore, Roerhich will be dismissed as a defendant.

Finally, plaintiff filed a motion requesting that the court recruit counsel to assist him with this case. Litigants in civil cases do not have a constitutional right to counsel, and the court does not have the authority to appoint counsel to represent a pro se plaintiff in a civil matter. Rather, the court can only assist in recruiting counsel who may be willing to serve voluntarily. *See* 28 U.S.C. § 1915(e)(1); *Pruitt v. Mote*, 503 F.3d 647, 654, 656 (7th Cir. 2007) (en banc). Generally, to show that it is appropriate for the court to recruit counsel, a plaintiff must meet three requirements. *Santiago v. Walls*, 599 F.3d 749, 760–61 (7th Cir. 2010). First, he must show that he is unable to afford counsel. Plaintiff meets this standard.

Second, a plaintiff must first show that he has made reasonable efforts to locate an attorney on his own. *Jackson v. Cnty. of McLean*, 953 F.2d 1070, 1072–73 (7th Cir. 1992) (“the district judge must first determine if the indigent has made reasonable efforts to retain counsel and was unsuccessful or that the indigent was effectively precluded from making such efforts”).

¹ At the preliminary pretrial conference that will be held later in this case, the magistrate judge will explain the process for plaintiff to use discovery requests to identify the Doe defendant and to amend his complaint to include that defendant's proper identity.

Plaintiff has submitted evidence showing that he has corresponded with multiple lawyers who have refused to take the case, so he meets this standard.

Third, the plaintiff must demonstrate that his case is one of those relatively few in which it appears from the record that the legal and factual difficulty of the case exceeds his ability to prosecute it. *Pruitt*, 503 F.3d at 654–55. The court must decide for each case “whether this particular prisoner-plaintiff, among many deserving and not-so-deserving others, should be the beneficiary of the limited resources of lawyers willing to respond to courts’ requests.” *McCaa v. Hamilton*, 893 F.3d 1027, 1036 (7th Cir. 2018) (Hamilton, J., concurring).

Plaintiff does not meet this requirement because it is far too early to tell whether this case is one of the relatively few in which it is necessary to recruit counsel. Plaintiff’s limited knowledge of the law and limited access to the law library are common impediments for prisoners litigating in this court. His filings so far do not suggest that his abilities are below those of the hundreds of plaintiffs who bring cases in this court each year without the aid of counsel. The court will deny plaintiff’s motion without prejudice, which means that he can renew his motion if he continues to believe that he is unable to litigate the lawsuit himself. But if he refiles his motion, he will need to explain what specific litigation tasks he is unable to accomplish.

ORDER

IT IS ORDERED that:

1. Plaintiff Reo Covington is GRANTED leave to proceed on a claim that defendants Dr. Patrick Murphy, Nurses Bowen and Doe/Bermier violated his rights under the Eighth Amendment by failing to provide insulin to him as discussed above.

2. Plaintiff is DENIED leave to proceed on any other claim, and defendant Roerhich is DISMISSED.
3. Plaintiff's motion for court assistance in recruiting counsel (dkt. #26) 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 defendants. Plaintiff should not attempt to serve defendants on his own at this time. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing of his order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.
5. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.
6. Plaintiff should keep a copy of all documents for his own files. If he is unable to use 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 are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 16th day of October, 2024.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge