

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

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STEVEN MICKELSON,

Plaintiff,

v.

OPINION and ORDER

SARA STAFF, NICOLE BROWN,  
H. GUNDERSON, and BHS DIRECTOR,

23-cv-695-jdp

Defendants.

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Plaintiff Steven Mickelson, without counsel, is incarcerated at New Lisbon Correctional Institution. Mickelson alleges that prison staff is failing to properly treat the pain that he suffers in his back, legs, and stomach, and a stomach malady that causes him to vomit.

Mickelson has paid the entire filing fee. Because Mickelson is a prisoner suing government officials, the next step is for me to screen his complaint and dismiss any portion 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. 28 U.S.C. § 1915A. In doing so, I must accept his allegations as true and construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). I will allow Mickelson to proceed on Eighth Amendment claims about his medical care.

ALLEGATIONS OF FACT

Mickelson has sciatic nerve damage and suffers pain in his back, legs, and stomach. He is prescribed over-the-counter pain medication but that isn't sufficient to adequately treat his pain. Mickelson developed a lump in his stomach and he vomits after eating or drinking.

Mickelson has filed dozens of health service requests for different medication or other treatment, but he has not received further treatment.

I take Mickelson to be saying that defendant Sara Staff (Mickelson does not explain her position) is the front-line medical employee who has failed to treat him. In particular, Staff sent Mickelson to an outside doctor, who prescribed him gabapentin, but she refused to follow that doctor's prescription. Mickelson is not currently being seen by a doctor; he says that New Lisbon Correctional Institution does not have an on-site doctor.

Mickelson also names Health Service Manager Nicole Brown and Regional Nursing Coordinator H. Gunderson as defendants; documents attached to his complaint show that they reviewed his treatment history after Mickelson filed an inmate grievance about his pain and stomach problems, but they reported that he was receiving proper care. Dkt. 1-1.

#### ANALYSIS

Mickelson contends that defendants violated his rights under the Eighth and Fourteenth Amendments. Because Mickelson is a convicted prisoner, I will consider his claims under the Eighth Amendment.

The Eighth Amendment prohibits prison officials from consciously disregarding prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976). A “serious medical need” is 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). A medical need is serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering, significantly affects an individual's daily activities, *Gutierrez v. Peters*, 111 F.3d 1364, 1371–73

(7th Cir. 1997), or otherwise subjects the prisoner to a substantial risk of serious harm, *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). A defendant “consciously disregards” an inmate’s need when the defendant knows of and disregards “an excessive risk to an inmate’s health or safety; the official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Snipes v. Detella*, 95 F.3d 586, 590 (7th Cir. 1996). Conscious disregard involves intentional or reckless conduct, not mere negligence. *Berry v. Peterman*, 604 F.3d 435, 440 (7th Cir. 2010).

Mickelson alleges that defendants Staff, Brown, and Gunderson are aware that he is suffering from severe pain in his back, legs, and stomach, and that he is suffering from an undiagnosed stomach malady that causes him to vomit. They’ve prescribed or approved over-the-counter medication that does not adequately treat his pain, yet they have not changed their treatment. Prisoners do not have the right to the medication of their choice, *Williams v. Ortiz*, 937 F.3d 936, 944 (7th Cir. 2019); *Lockett v. Bonson*, 937 F.3d 1016, 1024 (7th Cir. 2019). But healthcare providers must use medical judgment when making treatment decisions, including those involving medication, *see Glover v. Carr*, 949 F.3d 364, 368–69 (7th Cir. 2020), and they may not persist with treatment that they know to be ineffective, *Gonzalez v. Feinerman*, 663 F.3d 311, 314–15 (7th Cir. 2011). Based on Mickelson’s allegations, it is reasonable to infer that defendants have not treated his stomach problems and that they knew that he was not receiving adequate treatment for his pain, but they failed to take reasonable steps to provide better treatment. So I conclude that Mickelson has stated Eighth Amendment claims against Staff, Brown, and Gunderson.

Mickelson also names an unidentified “Bureau of Health Services director” as a defendant, but Mickelson does not explain how this official was personally involved in Mickelson’s care, so I will not allow him to proceed on a claim against this defendant.

## ORDER

IT IS ORDERED that:

1. Plaintiff Steven Mickelson is GRANTED leave to proceed on Eighth Amendment medical care claims against defendants Sarah Staff, Nicole Brown, and H. Gunderson.
2. Defendant Bureau of Health Services director is DISMISSED from the case.
3. The court expects the parties to treat each other and the court with respect. Any abusive or threatening comments or conduct may result in sanctions, including entry of judgment against the offending party.
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. 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 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 or lawyers 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 plaintiff's 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 claims may be dismissed for his failure to prosecute them.

Entered May 1, 2024.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge