

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PABLO MELVIN IGLESIAS,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 00-3069
	:	
LAWRENCE V. ROTH, JR.,	:	
et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

NOVEMBER 28, 2000

Before this Court is the Motion to Dismiss Plaintiff's Complaint Pursuant to FED.R.CIV.P. 12(b)(6) and/or for Summary Judgment filed by Defendants, Lawrence V. Roth, Julio M. Algarin, Dennis J. Molyneaux, Alerto Ottinger, Margaret Carrillo, M.D., Douglas M. Miller, M.D. and Steve Allison ("Defendants"). Plaintiff Pablo Melvin Iglesias("Mr. Iglesias"), a former inmate at the Montgomery County Correctional Facility ("MCCF"), brings this pro se civil rights action under 42 U.S.C. section 1983. Mr. Iglesias alleges that he was denied proper medical treatment and medication while incarcerated and under the care of the Defendants. For the reasons that follow, the Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to FED.R.CIV.P. 12 (b)(6) is granted.

I. BACKGROUND.

Mr. Iglesias was incarcerated at MCCF from

approximately September 26, 1999, until April 27, 2000. During Mr. Iglesias' incarceration, he suffered from asthma. Mr. Iglesias has a medical history of asthma and his asthma is successfully treated through inhalers.

Mr. Iglesias claims that he was denied proper asthma medication and treatment during his MCCF incarceration. Specifically, Mr. Iglesias claims that the Defendants did not provide him with the asthma medication prescribed to him prior to his incarceration. Through prison records and affidavits, the Defendants assert that Mr. Iglesias received proper asthma treatment and medication.

Mr. Iglesias filed his pro se Complaint in this Court on January 25, 2000. The Complaint alleges violations of Mr. Iglesias' civil rights while he was incarcerated pursuant to 42 U.S.C. section 1983 and seeks both compensatory and punitive damages. The Defendants filed the instant Motion to Dismiss Plaintiff's Complaint Pursuant to FED.R.CIV.P. 12(b)(6) and/or for Summary Judgment on the basis that Mr. Iglesias failed to exhaust all available administrative remedies prior to filing suit. Mr. Iglesias filed a Motion for an Extension of Time to Respond to Defendants' Motion to Dismiss and/or for Summary Judgment. The Court granted the Plaintiff's Motion and extended

the time for Mr. Iglesias' response until November 20, 2000.¹ As of this date, no response has been received from Mr. Iglesias. Thus, this Court will examine the merits of Mr. Iglesias' Complaint in light of Defendants' Motion.

II. STANDARD OF REVIEW.

The purpose of a motion to dismiss for failure to state a claim is to test the legal sufficiency of the allegations contained in the complaint. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). Under Federal Rule of Civil Procedure 12(b)(6), the court must determine whether the allegations contained in the complaint, construed in the light most favorable to the plaintiff, show a set of circumstances which, if true, would entitle the plaintiff to the relief he requests. FED.R.CIV.P. 12(b)(6); Gibbs v. Roman, 116 F.3d 83, 86 (3d Cir. 1997)(citing Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996)). A complaint will be dismissed only if the plaintiff could not prove any set of facts which would entitle him to relief. Nami, 82 F.3d at 65 (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

Conversely, "[s]ummary judgment is appropriate when, after considering the evidence in the light most favorable to the

¹ Specifically, the Order states that "Plaintiff shall have fourteen (14) days from the date of this Order to respond to Defendants' Motion." (See DKT. 16). The entry date of this Order was November 7, 2000. Despite this fact, Plaintiff still has not responded within the fourteen (14) day ordered time period.

nonmoving party, no genuine issue of material fact remains in dispute and `the moving party is entitled to judgment as a matter of law.'" Hines v. Consolidated Rail Corp., 926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact. Big Apple BMW, Inc. v. BMW of North Am., Inc., 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the nonmovant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. Id. at 1362-63. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). While pro se complaints are entitled to liberal construction, the plaintiff must still set forth facts sufficient to survive summary judgment. Shabazz v. Odum, 591 F. Supp. 1513 (1984)(citing King v. Cuyler, 541 F. Supp. 1230, 1232 n.3 (E.D.Pa. 1982)).

III. DISCUSSION.

According to 42 U.S.C. section 1997e(a), as amended by the Prison Litigation Reform Act of 1996 ("PLRA"), prisoners are required to exhaust all available administrative remedies prior to bringing a federal action challenging prison conditions. 42 U.S.C. §1997e(a); Booth v. Churner, 206 F.3d 289 (3d Cir. 2000), cert. granted, 68 U.S.L.W. 3774, 69 U.S.L.W. 3289 and 69 U.S.L.W. 3294 (U.S. Oct. 30, 2000)(No. 99-1964); Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000); Wyatt v. Leonard, 193 F.3d 876 (6th Cir. 1999); Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); Alexander v. Hawk, 159 F.3d 1321 (11th Cir. 1998). Specifically, the PLRA amended 42 U.S.C. section 1997e(a) to provide that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a)(amended by Pub.L. 104-134, Title I, § 101(a), 110 Stat. 1321-71 (1996)).

At the time that Mr. Iglesias filed this action, he was incarcerated at MCCF. (Pl.'s Compl.). Mr. Iglesias was then removed to the Hamilton County Correctional Institution located in Jasper, Florida. (Pl.'s Notice of Change of Address). Therefore, at all times relevant to this action, Mr. Iglesias has been a prisoner within the meaning of 42 U.S.C. section

1997e(a).²

"[T]he PLRA amended § 1997e(a) in such a way as to make exhaustion of all administrative remedies mandatory -- whether or not they provide the inmate-plaintiff with the relief he says he desires in his federal action."³ Nyhuis, 204 F.3d at 67. In its recent opinion in Nyhuis v. Reno, the United States Court of Appeals for the Third Circuit ("Third Circuit") sets forth a bright-line rule requiring that inmate-plaintiffs exhaust all available administrative remedies that are capable of addressing their grievances. 204 F.3d at 75. The court unequivocally affirmed the dismissal of the inmate-plaintiff's federal action due to his failure to exhaust all available administrative

² The PLRA defines the term "prisoner" to mean "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 42 U.S.C. § 1997e(h).

³ The courts of appeal appear to be split as to whether there is a "futility exception" to the exhaustion requirement of 42 U.S.C. section 1997e(a). Several courts have ruled that in cases where the prison's administrative remedies cannot provide the monetary relief sought, then exhaustion would be futile. See, e.g., Rumbles v. Hill, 182 F.3d 1064, 1068-69 (9th Cir. 1999); Whitley v. Hunt, 158 F.3d 882, 887 (5th Cir. 1998); Garrett v. Hawk, 127 F.3d 1263, 1266-1267 (10th Cir. 1997). Conversely, the United States Court of Appeals for the Third Circuit ("Third Circuit") and several other circuit courts have refused to apply such a futility exception to the exhaustion requirement of 42 U.S.C. section 1997e(a). See, e.g., Nyhuis v. Reno, 204 F.3d 65, 71 (3d Cir. 2000); Booth v. Churner, 206 F.3d 289, 300 (3d Cir. 2000); Wyatt v. Leonard, 193 F.3d 876, 878 (6th Cir. 1999); Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); Alexander v. Hawk, 159 F.3d 1321, 1328 (11th Cir. 1998).

remedies. Id. at 78.

Likewise, in Booth v. Churner, the Third Circuit also affirmed the district court's dismissal of that case based on the mandate that inmate-plaintiffs must exhaust all available remedies before filing a federal action. Booth, 206 F.3d at 300. As in the instant case, Booth dealt with an inmate-plaintiff who brought a civil rights action under 42 U.S.C. section 1983 and asserted that 42 U.S.C. section 1997e(a) was not applicable to his section 1983 excessive force action. Id. Like Mr. Iglesias, Booth argued that even if section 1997e(a) applied to his case, he was not subject to its exhaustion requirement because such exhaustion would be futile. Id.

Relying upon Nyhuis, the Third Circuit rejected Booth's arguments and held that the amendment of section 1997e(a) by the PLRA was intended "to subject all prisoner actions (save for habeas petitions) to section 1997e(a)'s exhaustion requirements. . . ." Id. at 295. The court affirmed the dismissal of Booth's action "because he 'failed . . . to exhaust his available administrative remedies (rather than those he believed would be effective)' before filing his section 1983 action." Id. at 300 (quoting Nyhuis, 204 F.3d at 78).

Accordingly, in the instant case, Mr. Iglesias must establish that he has exhausted all available administrative remedies before initiating his section 1983 civil rights action

against MCCF. Mr. Iglesias fails to make this showing. Instead, Mr. Iglesias' Complaint merely states that he followed each step of the available administrative procedures, but supplies no evidence to establish the requisite exhaustion of all available administrative remedies prior to filing suit.⁴ Because it appears that Plaintiff has not exhausted the administrative remedies available to him, the Complaint will be dismissed without prejudice. See Booth v. Churner, 206 F.3d 289, 300 (determining that dismissal without prejudice is appropriate when an inmate has failed to exhaust his available administrative remedies before filing an action under 42 U.S.C. § 1983).

An appropriate Order follows.

⁴ Mr. Iglesias claims to have attached papers to his Complaint that will prove his exhaustion of administrative remedies, however, such papers are medical request forms, general request forms or request forms in which the words "Informal Grievance" have been handwritten on the top. Such papers do not prove the requisite exhaustion of all available remedies.

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Plaintiff,	:	
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v.	:	NO. 00-3069
	:	
LAWRENCE V. ROTH, JR.,	:	
et al.,	:	
	:	
Defendants.	:	
_____	:	

ORDER

AND NOW, this 28th day of November, 2000, upon consideration of the Motion to Dismiss Plaintiff's Complaint Pursuant to FED.R.CIV.P. 12(b)(6) and/or for Summary Judgment filed by Defendants' Lawrence Roth, Julio M. Algarin, Dennis J. Molyneaux, Alberto Ottinger, Margaret Carrillo, M.D., Douglas M. Miller, M.D., and Steve Allison, it is hereby ORDERED that Defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to FED.R.CIV.P. 12(b)(6) is GRANTED, and the Plaintiff's Complaint is DISMISSED without PREJUDICE.

BY THE COURT:

Robert F. Kelly,	J.