

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

RONALD WESLEY : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
DONALD T. VAUGHN, et al :
Defendants. : Nos. 99-1228, 99-1229

MEMORANDUM AND ORDER

J. M. KELLY, J.

JUNE , 2002

Presently before the Court is a Motion to Compel Prison Officials to Provide Plaintiff with Access to Standardized Hep-C and Asthma Clinic Health Care, filed by Pro se Plaintiff, Ronald Wesley, a prisoner currently in custody of the Pennsylvania Department of Corrections ("DOC"). Plaintiff is currently incarcerated at the State Correctional Institution at Graterford ("Graterford"), and initiated this consolidated action against numerous prison officials, alleging civil rights violations and failure to reasonably accommodate his medical condition. In this instant motion, Plaintiff claims that the defendants' refusal to provide access to standardized care for his Hepatitis C and asthma conditions violated DOC policy as well as his rights under the Eighth Amendment. In effect, he is seeking a preliminary injunction.

FACTS

Plaintiff submitted an inmate grievance in late August, 2001, complaining that corrections officers were preventing him

from going to his medical appointments. Specifically, he alleged that they were responsible for rescheduling his August 3, 2001 appointment. The grievance was reviewed by Julia A. Knauer, R.N., who determined that Plaintiff was listed on the call sheet for that date, but medical personnel had listed him in the wrong location. Plaintiff was then rescheduled with the correct location and custody staff escorted him to the medical department. On August 17, 2001, Physician's Assistant Alvin Kincade wanted to examine Plaintiff in the Sick Call Room. However, Plaintiff refused, as he only wanted to be examined in the dispensary. Ms. Knauer concluded that Plaintiff was receiving medical care, and that when he was listed in the call sheet, custody staff brought him to the medical department.

Since Plaintiff has more than one chronic disease, he receives medical treatment in Graterford's Chronic Care Clinic. He was seen on March 4, 2002 and scheduled for an appointment on June 3, 2003. In early April, 2002, Plaintiff was treated for a gastrointestinal disorder with antibiotics and acid suppressants. He was later given medication for a prostate condition on May 2, 2002.

On May 11, 2002, Anthony Iaccarino, D.O., referred Plaintiff to a pulmonary specialist. However, Dr. Ralph Smith, the Medical Director, subsequently disapproved of the referral, explaining that Plaintiff was clinically stable. Dr. Smith also noted that

a pulmonary specialist was not necessary because Plaintiff was undergoing regular follow-ups and would continue to be seen in the Chronic Care Clinic.

According to the record, Plaintiff's asthma condition is also stable. Nothing in his chart indicates that he is experiencing asthma attacks or any problems relating to asthma due to his inhaler. On May 16, 2002, he received Alupent, the non-generic inhaler, even though Prison Health Services initiated a policy that therapeutic generic medications could automatically be substituted.

Plaintiff also received a Hepatitis C follow-up on May 23, 2002. The treating physician had already determined that Plaintiff's condition was "not clinically significant," meaning that the disease had not progressed to a significant extent and that routine follow-up was the appropriate course of action.

DISCUSSION

When considering a motion for a preliminary injunction, the district court must decide: (1) whether the moving party has shown a reasonable probability of success on the merits; (2) whether the moving party will be irreparably harmed by the denial of relief; (3) whether granting the preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. Brian B. ex rel. Lois B. v. Pennsylvania Dep't of

Edu., 230 F.3d 582, 583 (3d Cir. 2000). All four factors should favor preliminary relief before the injunction will issue. S&R Corp. v. Jiffy Lube Int'l, Inc., 968 F.2d 371, 374 (3d Cir. 1992).

Failure to provide adequate medical care is a violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment when it results from "deliberate indifference to the serious medical needs of prisoners." Estelle v. Gamble, 429 U.S. 97, 104 (1976). Negligent diagnosis or treatment does not constitute deliberate indifference. Id. at 107. Even actions characterizable as medical malpractice do not rise to the level of deliberate indifference. Parham v. Johnson, 126 F.3d 454, 458 n.7 (3d Cir. 1997). A prison official must be aware of and knowingly disregard an excessive risk to inmate health in order to be deliberately indifferent. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

In this case, there is nothing in the record that indicates that any defendant knew of and disregarded an excessive risk to the Plaintiff's health. Plaintiff has consistently received medical treatment for his various ailments, including: 1) follow-up care for Hepatitis C subsequent to his failed treatment; 2) a non-generic inhaler, Alupent, for his asthma; 3) appointments to the Chronic Care Clinic; 4) medication for his prostate condition; and 5) various medications for his gastrointestinal

disorder.

Moreover, Plaintiff's dissatisfaction with his medical care at Graterford does not prove that the defendants acted with deliberate indifference. A disagreement between the physician and the prisoner regarding the medical diagnosis and treatment does not constitute deliberate indifference under the Eighth Amendment. Boring v. Kozakiewicz, 833 F.2d 468, 473 (3d Cir. 1987). Rather, a physician's decision regarding diagnostic treatment constitutes medical judgment, which is not actionable under § 1983. Estelle, 429 U.S. at 107.

Thus, Plaintiff's claims that he is receiving inadequate medical treatment are really disputes of medical judgment. Even if Plaintiff's treatment rises to a level of medical malpractice, his proper remedy is in state tort law. Given that Plaintiff cannot show that defendants acted with deliberate indifference, Plaintiff cannot show a reasonable probability of success on the merits.

Plaintiff also cannot show that he will suffer irreparable harm by the denial of relief. Even though the Plaintiff claims that he is not receiving adequate treatment for his Hepatitis C and asthma conditions, the record indicates that these conditions are being treated and are in fact stable.

Accordingly, since Plaintiff cannot show reasonable likelihood of success on the merits or irreparable harm in the

absence of injunctive relief, the Motion to Compel Prison Officials to Provide Plaintiff with Access to Standardized Hep-C and Asthma Clinic Health Care is denied.

