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

ANTHONY GAGLIARDI	:	CIVIL ACTION
	:	
v.	:	
	:	
UNITED STATES GOVERNMENT, et al.	:	NO. 05-452

Baylson, J. **December 19, 2005**

MEMORANDUM

This case involves a suit against multiple employees of the Federal Detention Center in Philadelphia ("FDC") for allegedly conspiring with federal actors (an unnamed United States Marshal, a federal prosecutor, and a federal magistrate judge) as well as one Commonwealth actor, to deny Plaintiff Anthony Gagliardi ("Plaintiff" or "Gagliardi") timely and appropriate medical care. Specifically, Plaintiff alleges that Magistrate Judge Faith Angell, along with Assistant United States Attorney Barry Gross and Warden Edward Motley conspired with the medical staff at the FDC (collectively "Federal Defendants") to ignore his requests for medical attention. Plaintiff has also named an agent of the Pennsylvania Office of Attorney General, Michael Carlson ("Carlson"), as a defendant in this case, alleging that he was part of the group that denied Plaintiff appropriate medical care. Because Plaintiff did not specify in his complaint the basis for his suit, Federal Defendants have construed it as a Bivens action,[1] while Carlson, as a state actor, has construed it as a § 1983 suit. Presently before the Court are both Carlson's and Federal Defendants' June 24, 2005 Motions to Dismiss.

[1] The United States Supreme Court in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), provided federal courts with the ability to entertain suits seeking money damages against federal officers for violation of the United States Constitution.

While the Federal Defendants set forth multiple bases for dismissal in their motion, this Court will address only the issue of exhaustion of administrative remedies because it is dispositive. The Federal Defendants argue that the Plaintiff has failed to exhaust his administrative remedies under § 803(d) of the Prison Litigation Reform Act (PLRA), Pub. L. 104-134, 110 Stat. 1321 (codified at 42 U.S.C. § 1997e). Carlson does not raise the issue of exhaustion in his brief, instead focusing on Plaintiff's failure to state a claim under § 1983. Plaintiff's response in opposition to the Motions to Dismiss focuses chiefly on the alleged denials of medical treatment and does not provide any significant discussion the issue of administrative exhaustion.[2]

Under the PLRA, exhaustion of administrative remedies is required for all actions concerning prison conditions brought under federal law. 42 U.S.C. § 1997e(a). Section 1997e(a) provides that "no 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." The United States Court of Appeals for the Third Circuit has held that the PLRA requires "proper" exhaustion, meaning that the inmate must follow the procedural requirements of the prison grievance system. Spruill v. Gillis, 372 F.3d 218, 227 (3d Cir. 2004). If the prisoner fails to follow the procedural requirements, then his claims are procedurally defaulted. Id. at 231. The Spruill court noted that considering the legislative history of the PLRA, procedural default appears to serve the three

[2] The only assertions that could possibly relate to administrative remedies are Plaintiff's statement that he "began his remedy process in the Courts, to revert back to institutional remedies would be primitive," Pl's Resp. at 12, and his argument that "[t]here was an immediate Health danger that could not linger for five or six months through administrative remedies." Id.

main objectives of the statute: "(1) to return control of the inmate grievance process to prison administrators; (2) to encourage development of an administrative record, and perhaps settlements, within the inmate grievance process; and (3) to reduce the burden on the federal courts by erecting barriers to frivolous prisoner lawsuits." Id.

Looking first at the claim against Carlson, the statute itself expressly bars § 1983 suits concerning prison conditions if the prisoner has failed to exhaust administrative remedies. 42 U.S.C. § 1997e(a); see also Booth v. Churner, 532 U.S. 731, 741 (2001) (holding that under the PLRA, an inmate who had filed a § 1983 suit seeking only money damages still "must complete any prison administrative process capable of addressing the inmate's complaint and providing some form of relief, even if the process does not make specific provision for monetary relief"). Turning to the claims against the Federal Defendants, the Third Circuit has held that "or any other Federal law" language of § 1997e(a) encompasses Bivens actions. Nyhuis v. Reno, 204 F.3d 65, 68–69 (3d Cir. 2000) ("Bivens actions are by definition 'brought . . . under . . . Federal law,' and Congress clearly intended to sweep Bivens actions into the auspices of the § 1997e(a) when it enacted the PLRA.").

The Federal Defendants state that Plaintiff has not availed himself of the available administrative remedies for any issue raised in this suit, see Howard Declaration, Def's Mot. to Dismiss, Ex.1, and argue that his Bivens claims should therefore be dismissed due to failure to exhaust.[3] Here, Plaintiff has filed a complaint concerning prison conditions (improper medical

[3] Carlson did not include failure to exhaust administrative remedies in his Motion to Dismiss. Because the defense was raised by the Federal Defendants and is equally applicable to what Carlson characterizes as a § 1983 suit, this Court can and will apply the exhaustion doctrine to all Defendants in the case.

treatment at the FDC), and he does not claim to have sought administrative remedies regarding the prison conditions complained of in this matter. This Court therefore holds that the case must be dismissed as to all Defendants without prejudice.

The Plaintiff has also filed a motion seeking "depositions and discovery" in the case. Since he has failed to exhaust his administrative remedies, this Court lacks subject matter jurisdiction, and the motion for discovery will be denied as moot.

An appropriate Order follows.

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ORDER

AND NOW, this 19th day of December, 2005, it is hereby ORDERED that Defendants' Motions to Dismiss (Docs. No. 14 and 15) are GRANTED without prejudice. Plaintiff's Motions for Court Appointed Attorney (Doc. No. 21) and Depositions and Discovery Under Rules of Civil Procedure Rule 26–37 Inclusive (Doc. No. 22) are DENIED as moot. The Clerk shall close this case.

BY THE COURT:

s/ Michael M. Baylson

MICHAEL M. BAYLSON, U.S.D.J.