

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

SHERRY WILLIAMS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
BERKS COUNTY, PENNSYLVANIA,	:	NO. 05-6303
et al.,	:	
Defendants.	:	

MEMORANDUM OPINION

DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

December 15, 2006

I. INTRODUCTION

Plaintiff Sherry Williams (“Plaintiff” or “Williams”) brought this action against Defendants Berks County, Pennsylvania (“Defendant” or “the County”) and George Wagner, the warden of the Berks County Prison (“Wagner”) seeking equitable and monetary relief relating to her treatment while confined in the Berks County Prison (“the Prison”). The parties consented to magistrate judge jurisdiction. Presently before the Court is the County’s motion for summary judgment. (Doc. No. 19.)¹

For the reasons set forth below, we will deny Defendant’s motion.

¹ The motion for summary judgment was filed on behalf of the County and Wagner. Wagner was only identified in the Complaint as a defendant, however, with respect to Count Three, which was dismissed by the Court’s June 15, 2006 Order. Plaintiff has not amended her Complaint to include any further claim against Wagner and has indicated in her papers that, in light of the foregoing, she “does not regard George Wagner to be a party to this lawsuit any more.” *See* Pl. Resp. to Def. Mot. Summ. Jmt. (Doc. No. 25) at 1 n.1. We will issue a separate Order entering judgment in favor of Wagner and will consider the motion for summary judgment as pertaining to the only remaining defendant in this case: the County.

II. FACTUAL BACKGROUND²

At all times relevant to this litigation, Williams has had a history of musculoskeletal problems, which included joint replacement surgeries on both hips and her right knee. She suffered from lower extremity atrophy from hip necrosis, as well as osteoarthritis. One of her legs is shorter than the other. (Compl. ¶ 9; Ans. ¶ 9; Williams Stmt. ¶ 14.)³ As a result of these conditions, Williams requires a shoe lift and use of a cane to walk more than a few steps. With the use of her cane, she is able to walk considerable distances and ambulate up and down stairs. (Williams Stmt. ¶¶ 17, 40, 42, 44.) When she was not in custody at the Prison, she was able to do her own shopping, cleaning, and laundry; attend church services; shovel snow; and perform other activities of daily living without assistance. (Williams Stmt. ¶¶ 11, 94-96.)

Williams was incarcerated in the Prison from December 15, 2003 through January 21, 2004 and from February 6, 2004 through March 1, 2004. (Compl. ¶ 8; Ans. ¶ 8; Williams Stmt. ¶¶ 2, 13.) When she entered the Prison on December 15, 2003, she disclosed her history of musculoskeletal problems, the fact that one leg was shorter than the other, and that she needed to use a cane and a shoe with a lift in order to walk. (Compl. ¶ 9; Ans. ¶ 9; Williams Stmt. ¶¶ 15-17.) She also

² Defendants' motion contained numbered paragraphs describing the "procedural posture and factual background," as well the basis for the motion. Their memorandum of law included a brief "factual history" section but otherwise incorporated the factual discussion in the legal analysis. Plaintiff's response incorporates her discussion of the facts of the case in her discussion of each of the claims. The parties' papers, therefore, do not make it readily apparent which facts (whether or not deemed "material") are disputed. In light of the summary judgment standard, we assume to be true, for purposes of this motion, the facts asserted by Plaintiff that have some support in the record.

³ Plaintiff appended to her opposition to the summary judgment motion a "Verified Statement of Sherry M. Williams," dated November 13, 2006 and "made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsifications to authorities." *See* Doc. No. 25 at Ex. 1 (hereinafter "Williams Stmt."). We deem this document to satisfy the affidavit requirement of Rule 56(e) of the Federal Rules of Civil Procedure.

presented a prescription for an anti-depressant that she had been taking. (Williams Dep. at 54-57, 62.)⁴ The corrections officers consulted with the Prison’s medical personnel regarding the appropriate placement for Williams in light of her need for a cane and shoe lift. (Williams Dep. at 63; Williams Stmt. ¶ 19.)

At all times relevant to this suit, the Prison has engaged PrimeCare Medical, Inc. (“PrimeCare”) to provide medical, mental health, and related health care services to its inmate population. Pursuant to the Prison’s contract with PrimeCare, “decisions and actions regarding health care services provided to inmates are the sole responsibility of qualified healthcare personnel and cannot be compromised for security reasons; thus, all decisions involving the exercise of medical, mental health or dental judgment are the responsibility of [PrimeCare] and its health care practitioners.” (Contract ¶ 21.)⁵ In addition, the Prison’s Standard Operating Procedures permit “a physician, psychologist, physician’s assistant, or registered nurse” to order administrative segregation of an inmate — which could include placement in the medical housing unit — by issuance of a “Doctor’s Order to the Jailer” form (“DOJ”). (Prison Std. Op. Proc. at 188.)⁶

PrimeCare’s records reflect that a PrimeCare employee, Devon Cravener, CMA, met with Williams and, on December 15 at 4:15 p.m., completed PrimeCare’s Receiving Screening / Health

⁴ A copy of the transcript of Plaintiff’s deposition of August 23, 2006 was appended to Defendant’s summary judgment motion as Exhibit G.

⁵ A copy of the contract between the County and PrimeCare is among the documents appended to the affidavit of Paula Dillman-McGowan, CRNP and Jesse T. Kirsch, P.A., as Exhibit F to Defendant’s motion.

⁶ A copy of the Inmate Classification System chapter of the Prison’s Standard Operating Procedures is among the documents appended to the affidavit of Kimberly M. Bergan as Exhibit D to Defendant’s motion.

Assessment Form. In response to the question, “Are you in pain, bleeding, have injuries or an illness that would require a medical referral?”, Cravener, on behalf of Williams, circled “YES” and indicated issues with the left leg/hip and right hip/knee total replacements. She also affirmatively answered a question on the form regarding restrictions in the inmate’s mobility and/or obvious deformities or handicaps, again citing to the hip and knee replacements. (Health Assessment form, Williams Dep. at Ex. S4.) Cravener explained to Williams that because she had a cane and a shoe lift, she would be placed in the Prison’s medical unit, also known as the “N-Unit,” until she could be seen by a doctor. (Williams Dep. at 63; Williams Stmt. ¶ 21.) The records maintained by PrimeCare indicate that Dr. Marybeth Jackson approved, on December 15 at 3:30 p.m. through a DOJ, the placement of Williams in the medical unit “until seen and evaluated. States must use cane to ambulate.” (Bates 000030, appended to Def. Ex. F.)⁷

On December 16, 2003 at 12:40 p.m., Paula Dillman-McGowan, CRNP, took a medical history and performed a physical exam, supplementing a form that Cravener had begun the previous day. At that same time, Dillman-McGowan also completed a DOJ form that, like the form completed by Dr. Jackson, did not check any restrictions or include any medication administration instructions. The only comment contained on the form was that Williams “may have exercise 2 ° / day when released from quarantine.” (Bates 000029, appended to Def. Ex. F.)

⁷ On either December 15 or 16, 2003, Williams presented to medical personnel a note from one of her treating doctors dated December 4, 2003 which stated that she “need[ed] lift for left shoe & need[ed] to walk with cane in right hand.” She also presented another note from the same doctor dated November 25, 2003 that she “will require a cane for ambulation.” The doctor’s notes, however, did not recite any restrictions on her activities. (Williams Stmt. ¶¶ 40-44; Williams Dep. at Ex. S5.)

On January 14, 2004, after Williams had been housed in the medical unit for 30 days, a hearing was convened before the Institutional Classification Committee (the “ICC”) to determine if Williams’s medical confinement should continue. The ICC was comprised of a treatment supervisor, a custody representative, and a PrimeCare medical staff member, Judy Edwards, MA. Williams stated at the hearing that she felt she was being discriminated against because of her cane and complained that she could not go to church, had no books, and was only allowed out 2 hours. The ICC decided, however, that there would be no change in Williams’s medical confinement at that time. (Dillman-McGowan & Kirsch Aff. ¶ 2; Report of Institutional Classification Committee 30-day Hearings, appended to Def. Ex. F.) On January 21, 2004, Williams was transferred to a state correctional institution. (Williams Stmt. ¶ 73.)

On February 6, 2004, Williams was returned to the Prison and was again placed in the medical unit. (Williams Stmt. ¶ 74.) She was seen by Jesse T. Kirsch, P.A., who issued a DOJ that date that she should “move to N-unit” and that she should be restricted to the bottom bunk for 90 days. (Bates 000028, appended to Def. Ex. F.) Dillman-McGowan issued another DOJ on February 13, 2004 that did not reflect any restrictions but that noted that she was permitted to exercise. (Bates 000185, appended to Def. Ex. F.) Williams remained in the Prison’s medical unit until March 1, 2004, when she was again transferred to a state correctional institution. (Williams Stmt. ¶ 93.)

Williams was permitted to use her shoe lift and cane while housed in the Prison’s medical unit. (Williams Stmt. ¶ 46.) She contends, however, that she did not have access to certain benefits that would have been available to her had she been housed in the general prison population, such as Narcotics Anonymous meetings, group counseling sessions, and communion with a Protestant minister. (Williams Stmt. ¶¶ 47-57, 70.) She complains that she suggested ways in which she could

participate in religious services but that the Prison did not follow through on those arrangements during her periods of incarceration. (Williams Stmt. ¶¶ 60-64.)⁸ She also contends that she was effectively housed in isolation because, pursuant to Prison policy, she was not permitted to socialize with male prisoners and there were few, if any, healthy female inmates in the medical unit to provide any opportunities for social interaction. (Williams Stmt. ¶¶ 67-68, 79.) In addition, her recreation time was entirely indoors, while members of the general population could go outside during the recreation period. (Williams Stmt. ¶ 126.) She infers that she required stronger psychiatric medication to combat the effects of the isolation in the medical unit, which would not have been necessary had she been placed in the general population. (Williams Stmt. ¶ 72.) She also was not permitted to browse the law library, and obtain photocopies of law materials, where she would also have the benefit of speaking with other inmates regarding legal matters. (Williams Stmt. ¶¶ 84-87.) She also contends that she was prevented, due to her placement in the medical unit, from performing several of the jobs female inmates in the general population were allowed to work at the Prison. (Williams Stmt. ¶¶ 124-25.)

III. PROCEDURAL HISTORY

On December 7, 2005, Williams filed this action seeking compensatory damages (including for emotional pain, suffering, inconvenience, and mental anguish), punitive damages, attorney's fees

⁸ Williams wrote to Wagner on January 13, 2004 with her suggestions. His response, dated January 16, 2004, stated that he had no objection to her proposals and that the Prison would arrange for her to watch a televised Sunday morning service. (Williams Stmt. ¶¶ 60-61; Williams Dep. at Ex. S3.) January 16, 2004 was a Friday. Williams was transferred from the Prison on January 21, 2004, which was the next Wednesday. The record does not reflect that Williams renewed her request for access to televised Sunday morning services when she returned to the Prison beginning Friday, February 6, 2004. This second period of incarceration included four Sundays before she was again transferred on Monday, March 1, 2004.

and costs, and a declaratory judgment and injunctive relieve enjoining the Defendants “from depriving handicapped persons from access to programs, facilities, etc. available to the general prison population.” (Compl. at 5.) The first count of her complaint was brought against the County for violation of the Rehabilitation Act of 1973. She asserted that she was disabled during the time of her incarceration at the Prison but that she did not need to be confined to the medical ward and that her placement in that ward “because she used a cane” violated the Rehabilitation Act. (Compl. at 3-4.) The second count of her complaint was brought against the County for violation of the ADA and was based on the same facts as her Rehabilitation Act claim. (Compl. at 4.) The final count of the complaint was brought against the County and Wagner, in his official capacity, under 42 U.S.C. Section 1983 for deprivation of her federal rights by persons acting under color of state law. (Compl. at 4-5.)

Defendants sought the dismissal of the complaint in its entirety. (Doc. No. 3.) The Court rejected Defendants’ contention that the action should be dismissed for failure to exhaust administrative remedies pursuant to the PLRA, as Williams was not in custody at the time the complaint was filed and, thus, was not subject to the PLRA’s requirements. (Doc. No. 6 at 5.) The Defendants also sought the dismissal of the claims for declaratory and injunctive relief based on the fact that Williams was not in the custody of the Prison and therefore allegedly no longer had any personal stake in that aspect of the litigation. The Court declined Defendants’ invitation, at that juncture, to dismiss that aspect of the case, citing Plaintiff’s amended response to the motion to dismiss, which indicated that Williams had recently been transferred again to the Prison and which asserted that even if the case were deemed moot, the “capable of repetition yet evading review” exception to the mootness doctrine would apply. (Doc. No. 6 at 7-8, n.2. *See also* Doc. No. 5 at 4.)

However, the Court agreed with Defendants that Plaintiff could not recover punitive damages against Defendants under any of her claims and ordered her prayer for punitive damages to be stricken from each of the three counts of her complaint. (Doc. No. 6 at 6, 13.) In addition, the Court dismissed the Section 1983 claim in its entirety. (*Id.* at 10, 13.) Plaintiff was granted leave to file an amended complaint if she wished to attempt to cure the defects in her Section 1983 claim, but she did not do so. The County filed its answer, (Doc. No. 8), and now seeks summary judgment on the remaining two claims, under the Rehabilitation Act and ADA, that the Court refused to dismiss. In support of its motion, the County submitted declarations from various personnel who had contact with or responsibility for Williams during her periods of incarceration.⁹ In support of her brief in opposition to Defendant’s motion, Plaintiff submitted her own declaration.

IV. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. *Id.*

⁹ *E.g.*, Kimberly M. Bergan, Deputy Warden of Treatment (Def. Ex. D); Warden Wagner (Def. Ex. E); Paula Dillman-McGowan, CRNP and Jesse T. Kirsch, P.A. of PrimeCare (Def. Ex. F); Correctional Officer Jodi Schaeffer (Def. Ex. H); Shift Commander Dawn Fister (Def. Ex. I); and Chaplain Patrick Tutella (Def. Ex. J).

V. DISCUSSION

A. Sufficiency of Evidence of ADA and Rehabilitation Act Claims

Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Similarly, Section 504 of the Rehabilitation Act provides that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a). The Rehabilitation Act defines the term “program or activity” to mean “all of the operations of,” *inter alia*, “the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government . . . any part of which is extended Federal financial assistance.” *Id.* § 794(b)(1)(B). The substantive standards for determining liability under the two statutes have been recognized to be the same. *See McDonald v. Pennsylvania*, 62 F.3d 92, 95 (3d Cir. 1995). Defendant has not challenged the contention that Williams is a “qualified individual with a disability” under the ADA or an “otherwise qualified individual with a disability” as defined by the Rehabilitation Act.

We construe Plaintiff’s Complaint to allege that: (1) the decision to place her in the medical housing unit during both of her periods of incarceration was an act of unlawful discrimination, which caused her to suffer harm due to the isolated nature of the medical wing and restrictive policies; and (2) even if her placement in the medical unit was not unlawful, reasonable requests she made to

participate more fully in various programs administered by the Prison were denied to her because of her disability.

With respect to the first theory of relief, we observe that the decision to house Williams in the medical unit was made by PrimeCare personnel, at least nominally for medical reasons and pursuant to the authority given to PrimeCare under the Prison's Standard Operating Procedures and the contract between the County and PrimeCare. Plaintiff raises doubts about the legitimacy of this classification in light of the fact that placements in the medical unit are to be made for persons whose medical condition requires "close monitoring," and Williams received no such monitoring. *See Williams Stmt.* at ¶ 30; *Kirsch Dep.* at 62. Defendant contends that Williams has failed to produce evidence in response to the summary judgment motion that: (1) "any housing decision regarding Williams was made by the Prison or that the prison could have or should have overruled [Prime Care's] medical judgment," or that she "was housed in medical at the request of the prison"; or (2) that she was housed in the medical unit "solely because she used a cane." *See Def. Reply Br.* (Doc. No. 31) at 4. We believe, however, that Plaintiff has raised an issue of fact as to the Prison's complicity in the decision made by PrimeCare and the Prison's role in her continued housing in the medical unit, even after it would have been clear that she was not receiving close medical monitoring.¹⁰ While we appreciate PrimeCare's autonomy over decisions involving the medical treatment provided to inmates, there is evidence that Williams was not given medical treatment that required her to be housed in the medical wing, with its attendant restrictions. Therefore, we cannot accept the Prison's position that the decision it attributes to PrimeCare cannot be impeached. In

¹⁰ For example, with respect to the first period of incarceration, the Prison's ICC — which was comprised of a majority non-PrimeCare representatives — determined that Williams should remain in the medical wing even beyond the initial 30-day period.

addition, Defendant does not dispute that this housing placement was made because of the fact that Williams had a medical condition that rendered her, in the Prison's eyes, "medically fragile." *See* Def. Br. in Supp. Mot. Summ. Jmt. at 7. We will permit Plaintiff to proceed to trial on her claim that her housing in the medical unit during her two periods of incarceration violated the ADA and the Rehabilitation Act.

With respect to the second theory of relief, we find that Williams has adduced sufficient evidence to permit her to go forward on her reasonable accommodation claim. Plaintiff has put forward evidence that she requested access to programs and activities that were not otherwise available to her due to her placement in the medical wing, *e.g.*, NA or AA meetings and Protestant church services. *See* Williams Stmt. ¶ 82 (repeatedly asked counselor and counselor's supervisor if she could go to NA or AA meetings); *id.* ¶¶ 60-66 (requested of warden that she attend service in F unit or watch particular program, but neither came about). Implicit in her papers is the contention that it would have been possible, and reasonable, for the Prison to permit her participation in these activities but that it did not do so by reason of her disability. While Plaintiff has not come forward with evidence that what motivated the Prison to deny these particular requests was her musculoskeletal condition *per se*, there is sufficient evidence in the record that the failure to comply with these requests was due, at least in part, to the fact that she was confined in the medical unit, which confinement resulted from the Prison's assessment of her disability. Although this evidence is admittedly indirect, and subject to counter declarations filed by Defendant, we conclude that there are sufficient factual issues to permit this claim to proceed.

B. Sufficiency of Rehabilitation Act Claim

Defendant contends that Plaintiff has not “stated” a cause of action under the Rehabilitation Act because she has not demonstrated that the Prison is a recipient of federal funding as to place it within the scope of entities regulated by that Act. Plaintiff responds as if Defendant were challenging the sufficiency of her initial pleading — by discussing the requirements of Rule 8 and seeking leave to amend her complaint if necessary — but also asserts that she will prove, through Wagner’s testimony at trial, that the Prison received funding at the relevant time as to subject it to the requirements of the Rehabilitation Act.

We share Defendant’s concerns that Plaintiff’s only offer of proof in response to the motion was a newspaper article describing a statement attributed to Wagner, which would not be admissible evidence at trial. However, given that the substantive elements of the Rehabilitation Act claim simply mirror the ADA claim that we are allowing to proceed to trial (and thus consideration of the Rehabilitation Act claim will not significantly add to the trial of this matter), we will not, at this time, deny Plaintiff the opportunity to prove this aspect of her claim.

C. Availability of Injunctive or Declaratory Relief

Defendant renews its argument that Plaintiff’s claims for declaratory and injunctive relief under the ADA and Rehabilitation Act must be dismissed because she is not presently incarcerated at the Prison and is not scheduled to return there. When it ruled on the motion to dismiss earlier in the case, the Court permitted Plaintiff’s claims for injunctive and declaratory relief to go forward in light of the fact that, at the time of the decision, Williams was again detained in the Prison. *See* Doc. No. 6 at 7-8 n.2.

At this time, Williams is not incarcerated at the Prison. She contends in her opposition papers that she satisfies the requirements for the “capable of repetition, yet evading review” exception to the mootness doctrine, which requires that she demonstrate: (1) the challenged action endures too short a time to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable likelihood that the same complaining party would be subjected to the same action again. Williams contends that the permanent nature of her disabilities, coupled with “the recidivism rate of inmates,” establishes a “a reasonable likelihood that Ms. Williams will be arrested again and that, if this occurred, she would be subjected to the same action again.” *See* Pl. Resp. to Def. Mot. Summ. Jmt. at 20-21.

We believe we would be speculating too much if we were to presume Plaintiff would find herself detained again at the Prison such that she would continue to have a personal stake in any injunctive relief or declaratory judgment awarded in this case. However, this question will be reserved until the time of trial, at which point the mootness both of Plaintiff’s request for relief and of Defendant’s objection to her request can be more easily resolved.

VI. CONCLUSION

Defendant raises important questions about the propriety of injunctive relief and the available of relief under Rehabilitation Act give that statute’s required nexus to federal financial assistance. However, because we conclude that there are sufficient fact questions requiring trial on the merits of the disability discrimination claims, we are not prepared to foreclose the Plaintiff from proceeding with these claims at trial. We hold this view particularly in light of the fact that the parties have now stipulated to a non-jury trial.

An appropriate Order follows.

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

SHERRY WILLIAMS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
BERKS COUNTY, PENNSYLVANIA,	:	NO. 05-6303
et al.,	:	
Defendants.	:	

ORDER

AND NOW, this 15th day of December, 2006, upon consideration of Defendant's motion for summary judgment and the memoranda of law filed in support thereof and in opposition thereto, and for the reasons stated in the accompanying memorandum, IT IS HEREBY ORDERED that Defendant's motion (Doc. No. 19) is DENIED.

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE