

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

JOSEPH OWENS,	:	
Plaintiff,	:	
	:	
v.	:	
	:	CIVIL ACTION
CHESTER COUNTY,	:	
SUPERINTENDENT OF CHESTER	:	
COUNTY PRISON, CORRECTIONAL	:	NO. 97-1344
OFFICER LENNON, UNKNOWN	:	
CORRECTIONAL OFFICER 2,	:	
UNKNOWN CORRECTIONAL OFFICER	:	
3, EMSA LIMITED PARTNERSHIP,	:	
AND DR. CHARLES BUTLER,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

January 28, 2000

Presently before the Court in this Title 42 U.S.C. § 1983 action is Defendants Chester County, Superintendent of Chester County Prison, Correctional Officer Lennon, Unknown Correctional Officer 2, Unknown Correctional Officer 3, EMSA Limited Partnership, and Dr. Charles Butler (“Defendants”¹) Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. Plaintiff Joseph Owens (“Plaintiff”) response thereto has been considered and, for the reasons set forth below, the Defendants’ Motion for Summary Judgment is granted in part, and denied in part..

1. Defendant Chester County and the Chester County Prison are herein collectively the “Chester County Defendants,” as Count II’s allegations of Section 1983 violations are limited to these two entities. Because Officer Lennon and Unknown Officers 2 and 3 maintain the same status, they will be collectively known as the “Officer Defendants.” The remaining defendants, EMSA Limited Partnership and Dr. Charles Butler, as independent contractors will be collectively known as the “EMSA Defendants.”

I. BACKGROUND²

In early 1995, Plaintiff began seeing a physician for circulatory problems in his left leg. As a result of these problems, he developed lesions on the leg, which were described as “little sores” that “weep” and “crack open.” The leg would swell, from knee to foot, up to twice the size of his normal leg, and Plaintiff was unable to, at times, put on a shoe. As a result of the circulatory problems, Plaintiff suffered from severe pain in his left foot.

In January of 1995, Plaintiff underwent a patch angioplasty of his left femoral artery. He was told that he had a circulatory blockage of his left leg, and that depending on the success of the treatment, amputation was a possibility. Upon release from the hospital, Plaintiff was given crutches, placed on bed rest, and told to stay off of his leg. He was also told that he would need to return to the hospital within two weeks for additional surgery on his left leg.

On January 24, 1995, only two days after release from the hospital, Plaintiff was incarcerated at the Chester County Prison due to a parole violation. When he was brought to the prison, Plaintiff was still walking with the aide of his crutches. Upon arrival to the prison, he was placed in the prison infirmary due to continued pain as a result of the incision made during the patch angioplasty. Plaintiff spent the night in the infirmary and was transferred to K block even, and then to K block odd. After a brief stay on K block, Plaintiff was transferred to J block, where he continued to utilize his crutches.

As a result of Plaintiff’s difficulty maneuvering up and down the two flights of stairs on J block, he requested another transfer. After a brief stay on K block odd, Plaintiff was

2. The following facts are based on the evidence of record viewed in the light most favorable to Plaintiff, the non-moving party, as required when considering a motion for summary judgment. Carnegie Mellon Univ. v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

transferred to M block--a flat block without stairs. It is the treatment that Plaintiff received while on M block that is at issue in this case.

Plaintiff contends that while on M block, the Chester County prison staff--pursuant to a prison policy--denied him the use of his crutches while within the block. While crutches were allowed for off-block use (i.e., when the inmate has to leave the housing unit to somewhere else within the institution), crutches or canes were not permitted on M block. It is unrefuted that canes and crutches were allowed on other blocks within the institution, however, there is no evidence that any of the blocks allowed crutches inside of the individual cells.

While Plaintiff was able to get around the M block without the crutches, he was forced to drag his bad leg behind him, thereby causing him a great deal of pain and discomfort. At times, Plaintiff was unable to eat meals and was unable make phone calls. Plaintiff contends that when he informed the prison staff about his problems, they told him, "tough luck."

As a result of the pain that accompanied his condition, Plaintiff was prescribed a steady diet of pain-killing medication. Plaintiff asserts that when he would ask the M block prison officers to call the infirmary and request pain medication, the officers would neglect to call. This prevented the prison nurses from delivering the medication that Plaintiff sought, for the request was never carried out.

On March 20, 1995, the Chester County Court of Common Pleas ordered that Plaintiff be released from prison in order to have necessary surgery. The surgery was conducted on March 27, 1995 and eventually, in June 1995, Plaintiff's leg was amputated.

Plaintiff filed his four-count Amended Complaint alleging the following: a) an Eighth Amendment claim of deliberate indifference to serious medical needs against the Chester

County Defendants, EMSA Limited Partnership (“EMSA”), and Dr. Charles Butler based on the lack of medical treatment that Plaintiff received at Chester County Prison; b) an Eighth Amendment claim of deliberate indifference to serious medical needs against the Chester County Defendants for denying Plaintiff access to crutches and pain medication; c) a claim under the ADA against all defendants for denying Plaintiff Access to crutches; and d) a claim of medical malpractice against defendants EMSA and Butler.³

In March 1999, this Court appointed Dr. Marie A. Savard to act as the medical expert. Dr. Savard’s report included an extensive background of Plaintiff’s medical treatment and attention while at incarcerated at Chester County Prison. Dr. Savard’s Medical report states that on January 24, 1995--the same day that Plaintiff was admitted to Chester County Prison--Plaintiff underwent an initial health evaluation, wherein his history of recent left leg bypass was noted. A physical examination also took place that day. In pertinent part, Dr. Savard’s Report further stated:

History notes that Mr. Owens required glasses and dentures that he had with him. A wheelchair, crutches or cane were not noted Included in the Correctional Facility health records was the Brandywine Hospital discharge plan that noted the follow-up appointment with Dr. Budeir as well as the prothrombin time on January 25 Review of the additional health records included multiple blood tests primarily monitoring the prothrombin time. There is evidence on January 25, 1995 a prothrombin time was drawn and . . . again repeated on February 3 . . . 18 and March 21. . . . Review of the physician orders from the correctional facility noted that on admission Mr. Owens was given his usual preoperative medication and Coumadin. . . . Review of pain medications note that he was given Darvocet N 100, two tablets four times a day through March 4. He was also ordered to have

3. Dr. Savard issued a report on April 22, 1999, concluding that the medical treatment that Plaintiff received at Chester County Prison did not cause the loss of his left leg. As a result, Plaintiff stipulated to the dismissal of his medical malpractice claim against EMSA and Dr. Butler.

Tylenol #3 which is Tylenol with codeine liquid if the Darvocet and Nalfalon, and anti-inflammatory, was not adequate to relieve his pain.

II. 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). The moving party has the burden of demonstrating the absence of any genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A factual dispute is “material” if it might affect the outcome of the case under the governing substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Additionally, an issue is “genuine” “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id.

On summary judgment, it is not the court’s role to weigh the disputed evidence and decide which is more probative; rather, the court must consider the evidence of the non-moving party as true, drawing all justifiable inferences arising from the evidence in favor of the non-moving party. See id. at 255. If a conflict arises between the evidence presented by both sides, the court must accept as true the allegations of the non-moving party. See id.

If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). In doing so, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec.

Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). If the evidence of the non-moving party is “merely colorable,” or is “not significantly probative,” summary judgment may be granted. Anderson, 477 U.S. at 249-50.

III. DISCUSSION

Plaintiff brought this action pursuant to Title 42 U.S.C. Section 1983 and the American with Disabilities Act, however, our immediate attention will focus on Plaintiff’s Section 1983 claims. Section 1983 provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. There is no dispute as to whether state actors were allegedly involved, so for purposes of this Motion, I will assume that Defendants did act under color of state law. Plaintiff claims that the constitutional deprivation is Defendants’ violation of his Eighth Amendment right to be free from cruel and unusual punishment . Plaintiff asserts two claims of deliberate indifference to serious medical needs based on a lack of medical treatment, and for a denial of access to crutches and pain medication.

In order to successfully prove that his/her medical treatment during incarceration violated his/her Eighth Amendment rights, a plaintiff must present “facts or omissions sufficiently harmful to evidence deliberate indifference to [his/her] medical needs.” Rios v.

Sandl, et al., 1998 WL 961896, *5 (E.D.Pa. Dec. 31, 1998), (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). The United States Court of Appeals for the Third Circuit has stated:

Courts will disavow any attempt to second-guess the propriety or adequacy of a particular course of treatment . . . [which] remains a question of sound professional judgment. Implicit in this deference to prison medical authorities is the assumption that such informed judgment has, in fact, been made.

Id. at *6; (quoting Inmates of Allegheny County Jail, 612 F.2d 754, 762 (3d Cir. 1979)).

However, “where knowledge of the need for medical care is accompanied by the intentional refusal to provide that care, the deliberate indifference standard has been met.” Id. (quoting Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir.1987)). The issue before the Court then, is whether or not the Plaintiff has successfully presented evidence that Defendants acted with deliberate indifference.

Deliberate Indifference

Under the Eighth Amendment of the United States Constitution, penal measures and conditions which violate civilized standards and concepts of humanity and decency are prohibited. Gamble, 429 U.S. at 102. With respect to prison conditions, “not every governmental action affecting the interest or well-being of a prisoner is subject to Eighth Amendment scrutiny;” however, actions which impose the unnecessary and wanton infliction of pain constitute cruel and unusual punishment in violation of the Eighth Amendment. Carrigan v. Davis, 1999 WL 988139, *3 (D.Del. September 28, 1999) (citing Whitley v. Albers, 475 U.S. 312, 319-320 (1986)). The Eighth Amendment protects prisoners from the infliction of cruel and unusual punishment by the government. This Amendment is violated when it “so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to

provide for his basic human needs.” Reed v. McBride, 178 F.3d 849, 852 (7th Cir. 1999)(citing Helling v. McKinney, 509 U.S. 25, 32 (1993)). “To state a claim under the Eighth Amendment, an inmate must allege that he has been deprived of the minimal civilized measure of life’s necessities and that the prison official acted with deliberate indifference in subjecting him to that deprivation.” Payton v. F. Horn, 49 F.Supp.2d 791, 796. The United States Supreme Court has established a two-part test that must be satisfied in order for a plaintiff to avoid losing on summary judgment. In Farmer v. Brennan, 511 U.S. 825, 834 (1994), the Supreme Court set out the test: the plaintiff must show that 1) his condition was objectively serious, and 2) the state officials acted with deliberate indifference. Id.

A condition is objectively serious if the failure to treat it “could result in further significant injury or unnecessary and wanton infliction of pain. Reed, 178 F.3d at 852. Plaintiff suffered from a history of medical problems that, even when treated, led to the eventual amputation of that leg. Therefore, it is clear that Plaintiff satisfies the objective standard of the test set out in Farmer and we must proceed to the second prong of the test--whether or not Defendants acted with deliberate indifference.

The United States Supreme Court has defined deliberate indifference as subjective recklessness, or a conscious disregard of substantial risk of serious harm. Sandl, 1998 WL 961896, at * 6;Farmer v. Brennan, 511 U.S. 825, 839 (1994). “If a defendant knows of a substantial risk to a plaintiff’s health and consciously disregards it, he is being deliberately indifferent.” Id.; Gamble, 429 U.S. at 106. To establish deliberate indifference, therefore, a plaintiff must prove that the defendant(s) had a culpable state of mind and intended wantonly to inflict pain. Rosales v. Coughlin, 10 F.Supp.2d 261, 264 (W.D.N.Y.1998); see Wilson v. Seiter,

501 U.S. 294, 299 (1991) Courts have repeatedly held “where no legitimate law enforcement or penological purpose can be inferred from the defendant’s conduct,” the conduct itself may be sufficient evidence of a culpable state of mind. Davis, 1999 WL 988139 at *5. However, the United States Supreme Court has cautioned that mere negligence is not actionable. Estelle, 429 U.S. at 106. Rather, plaintiff must allege conduct that is so “repugnant to the conscience of mankind” or “incompatible with the evolving standards of decency that mark the progress of a maturing society.” Id. at 102, 105-06.

A court should not allow a prison inmate to create a constitutional claim out of a mere disagreement over the proper medical treatment. See Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir.1998) (“So long as treatment given is adequate, the fact that a prisoner might prefer a different treatment does not give rise to an Eighth Amendment claim.”). “Prison officials . . . have broad discretion in determining the type and extent of medical treatment given to inmates.” Coughlin, 10 F.Supp.2d at 264 (citing Thomas v. Pate, 493 F.2d 151, 157 (7th Cir.1974)). Courts have repeatedly held that an inmate does not have an absolute right to the treatment of his choice. Id.; see also Dean v. Coughlin, 804 F.2d 207, 215 (2d Cir.1986); see also Jackson v. Fair, 846 F.2d 811, 817-18 (1st Cir.1988). As the Court in Dean stated, a “correctional facility is not a health spa, but a prison in which convicted felons are incarcerated.” Dean, 804 F.2d at 215.

A. Count One--Deliberate Indifference to Serious Medical Needs:

Count One of Plaintiff’s Amended Complaint alleges that Defendants subjected Plaintiff to cruel and unusual punishment by denying him serious medical treatment in violation of the Eighth Amendment of the United States Constitution. In their Motion to Dismiss, Defendants contend that Plaintiff was appropriately treated for his medical needs while at

Chester County Prison. In response to Defendants' assertions, Plaintiff cites to the United States Court of Appeals for the Third Circuit in stating that an Eighth Amendment violation exists where the prison official: (1) knows of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) delays necessary treatment based on a non-medical reason; (3) prevents a prisoner from receiving needed or recommended medical treatment; or (4) persists in a particular course of treatment in the face of resultant pain and risk of permanent injury. Rouse v. Plaintiff, 182 F.3d 192, 197 (3d Cir.1999).

At this point, it is important to discuss the structure of Plaintiff's Complaint. Count One alleges violations of the Eighth and Fourteenth Amendments and Section 1983. However, the collective group of Defendants are not one and the same for purposes of our analysis. While Plaintiff specifically names Chester County (a government entity), he includes Dr. Charles Butler (an independent contractor) as well. In light of the fact that an ambiguity exists from this, and because Count Two of the Plaintiff's Amended Complaint makes the same claim as the previous Count, while naming only the Chester County Defendants, I will not address Count One as it applies to the Chester County Defendants. Rather, Count One will be addressed as it pertains to the Officer Defendants and the EMSA Defendants.

Counts One alleges that all Defendants knew of Plaintiff's medical problem and intentionally refused to provide medical treatment. However, as Dr. Savard's expert report conclusively establishes, while surgery may have been delayed, Plaintiff was not denied medical treatment by Chester County or the EMSA Defendants. Plaintiff contends that Defendants' Motion should be denied, for genuine issues of material fact exist as to whether the Officer Defendants violated the Third Circuit standards both in refusing to allow Plaintiff his crutches

while he was housed on M block and in failing to relay his request for pain medication to the Chester County Prison infirmary.

Refusal of Plaintiff's Use of Crutches

Plaintiff alleges that Defendants violated his Eighth Amendment rights in failing to provide him with crutches or a wheelchair, and as a result, he occasionally missed meals, and this also prevented him from utilizing the prison library, the prison phone, and the facilities in the prison yard. Plaintiff argues that, although he was permitted to use crutches while he was housed on other blocks within the Chester County Prison, the Defendants nonetheless, enforced a “policy” against him which required him to walk up to twenty feet on his affected leg. Plaintiff contends that because the use of crutches was allowed in some cell blocks and not others, the only possible reason for the denial of crutches on M block was to cause him additional pain. This is a conclusion that is not supported by other evidence.

Named Defendant, Officer Lennon, testified that the reason that Plaintiff was not allowed to have crutches on M block was for “security reasons,” primarily “so the inmate cannot use them to injure himself or others.” This seems to suggest that this was the policy of Chester County Prison in M block. Plaintiff is correct in pointing out that he was allowed to use his crutches while he was housed on other blocks in the prison, however, this does not mean that Defendants were deliberately indifferent to Plaintiff's serious medical needs. The fact that Plaintiff was originally housed in a block where crutches were permitted is evidence that there was not any indifference toward his needs. In fact, Plaintiff requested that he be removed to a block that was flat and more conducive to his mobility. As previously stated, M block was a flat block without stairs.

Plaintiff asserts that courts throughout the country have found that the denial of crutches to a prisoner who will suffer pain if forced to walk without aid constitutes deliberate indifference to a serious medical need. See Johnson v. Hardin County, 908 F.2d 1280, 1283-84 (6th Cir.1990)(refusal to provide inmate with crutches supported deliberate indifference claim); Rosales v. Coughlin, 10 F.Supp.2d at 267-71 (W.D.N.Y. 1998)(denying summary judgment motion of prison officers who allegedly deprived an inmate with leg problems of his cane). Therefore, it is important to discuss these decisions thoroughly.

In Rosales, plaintiff entered the New York State Department of Correctional Services (“DOCS”) with some ongoing problems with his back and his left leg. Rosales, 10 F.Supp.2d at 263. Plaintiff’s complaint alleged, in general, that he frequently complained about back pain and other medical problems, and that defendants either did nothing or provided him with inadequate care and treatment. Defendants in the action varied from, inter alia, the DOCS Commissioner, to physicians, nurses, and the Superintendent of DOCS. Id.

The plaintiff alleged that the medical treatment he received was inadequate, that he complained about his treatment to DOCS officials and nothing was done in response. Id. While admitting that he was seen by physicians and other medical personnel on a frequent basis, the plaintiff claimed that the cane that had been prescribed by a physician was seized from him on several occasions. Id. In response, the defendants argued that the treatment that the plaintiff received while in DOCS’ custody was fully adequate. For purposes of our analysis, the seizure of the plaintiff’s cane in Rosales is of importance.

In Rosales, the plaintiff alleged that on one particular occasion, one of the defendants verbally harassed him, turned his cell water off, and took the plaintiff’s cane away

from him by reaching into his cell bars while the plaintiff was lying down. The plaintiff reported this incident to a supervisor who allegedly took no action. Id. at 268.

The plaintiff was released from the prison infirmary upon treatment for injuries suffered as a result of a fall, and was discharged with a cane. Again, however, the same defendant reached into the plaintiff's cell and took the cane. The plaintiff reported this incident to a sergeant, and that sergeant responded that he was "tired of [plaintiff's] continuous [sic] complaint about his officer, if [plaintiff] do[es]n't leave him or his officers alone he will assure his officers beat [plaintiff] up while he watch and, that [plaintiff] better watch [his] meals." Id. The plaintiff was able to substantiate these allegations with eyewitness testimony.

In denying summary judgment, the district court stated that, based on the plaintiff's allegations, the defendants intentionally interfered with his prescribed medical treatment by confiscating his crutches and cane without cause, thereby subjecting him to needless pain and suffering. The district court concluded that a reasonable trier of fact could conclude that the defendants knowingly disregarded an excessive risk to the plaintiff's health. However, the key to this decision, and other similar decisions, is the fact that the cane was specifically prescribed by a doctor. Id.; see also Jones v. Fairman, No. 89 C 7586, 1991 WL 148156 (N.D.Ill. July 25, 1991, *11 (plaintiff's allegation that the defendant "deliberately interfered with his medical treatment by forcibly taking his cane away from him . . . [wa]s sufficient to withstand a motion for summary judgment" when plaintiff was given the cane by prison doctors.)).

In the case at bar, there is no evidence offered by Plaintiff that he was prescribed crutches or that they were essential to his treatment. In fact, Dr. Savard's report informs us that Plaintiff's leg amputation was not caused by his walking on his leg without the aid of crutches.

Therefore, when viewing the facts in the light most favorable to the plaintiff, I am unable to find that Defendants were deliberately indifferent to Plaintiff's needs in failing to provide him with his crutches while in his cell. Plaintiff's own deposition testimony reveals that he was able to walk without the aid of crutches. Understandably, Plaintiff did suffer from severe leg pain, however, he does not show that such pain was the result of Defendants' refusal to allow possession of crutches while on Block M. Furthermore, while he was provided with thorough medical attention and medication was prescribed, at no time was Plaintiff prescribed a set of crutches. Therefore, Plaintiff's claim of deliberate indifference to medical needs, as it pertains to the storage of his crutches is dismissed as to all Defendants.

Failure to Relay Plaintiff's Request for Pain Medication

According to Plaintiff's unrefuted deposition testimony, Plaintiff asked M block prison guards to have pain medication sent up from the infirmary, but the guards refused to do so. Therefore, when the medical staff arrived at M block to deliver medications, Plaintiff's pain medication was not available and he could not receive it. As Dr. Savard's report conclusively establishes, Plaintiff was prescribed several pain medications, including Percocet, to be administered up to four times daily. It is not disputed that Plaintiff was not always given pain medication upon request, however, the record does not establish either way how often Plaintiff's requests were denied. For purposes of this Motion, this Court must consider the evidence of the non-moving party as true, drawing all justifiable inferences arising from the evidence in favor of the non-moving party. In light of this and the evidence on record, it is not possible to grant summary judgment as a dispute arises as to the frequency of the Officer Defendants' failure to relay Plaintiff's request for pain medication to the Chester County Prison infirmary. Clearly, had

the Defendants failed to administer pain medication on a regular basis, or refused to administer medication for that matter, then Plaintiff's claim would survive the Motion at issue. Dr. Savard's medical report cites to several instances where Plaintiff's medical needs were observed, documented and administered, however, it fails to establish how frequently the Officer Defendants failed to relay his requests. The record does not inform the Court as to the procedure of administering medication in the Block M. Therefore, if Plaintiff was responsible for making the request for the pain medication in order to receive it, and the Officer Defendant's failed to relay such request, Plaintiff was denied access to prescribed medicine. See Saunders v. Horn, 959 F.Supp. 689, (E.D.Pa., Dec. 23, 1996)(citing, Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988)("The Third Circuit has held that, to be liable in Section 1983 cases, a defendant must be personally involved in the alleged wrongful conduct. Personal involvement can be shown through personal direction or through actual knowledge and acquiescence.)

As applied to the EMSA Defendants this conduct cannot be said to have been so "repugnant to the conscience of mankind" that it should be left for the jury to decide. As Dr. Savard's report establishes, the EMSA Defendants were very active in the Plaintiff's treatment. However, because Plaintiff was prescribed pain medication and his allegations against Officer Defendants are in dispute, as they pertain to pain medications, this Court cannot grant Summary Judgment as to the Officer Defendants.⁴

4. For purposes of the Motion for Summary Judgment, the issue of the Officer Defendants' failure to provide Plaintiff with prescribed pain medication is the only issue that survives. Pursuant to this Memorandum, all of the claims against the EMSA Defendants are dismissed. The only surviving claim is Plaintiff's deliberate indifference claim as it pertains to the Officer Defendants' failure to provide pain medication. No claim exists with regard to the refusal to provide crutches.

B. Count Two--Deliberate Indifference to Serious Medical Needs (Chester County)

To maintain an action against a municipality, a plaintiff must initially show that the governmental entity's actions amounted to a policy, ordinance or custom, or alternatively, that the actions were committed by an official high enough within the entity such that the actions can fairly be attributed to a governmental decision. See Monell v. Department of Soc. Servs., 436 U.S. 658, 691-95 (1978). Thus, a municipality may be held liable for acts that it has ordered, or by virtue of actions taken by its own officials who have "final authority to establish municipal policy with respect to the action ordered." Pembauer v. City of Cincinnati, 475 U.S. 469, 480-81 (1986).

Although a municipality may not be successfully sued under Section 1983 on a theory of respondeat superior for injuries caused solely by the acts or omissions of its agents or employees, a municipality may be held liable under this section for the implementation of an official policy or unofficial custom which results in the deprivation of a plaintiff's constitutional rights. See Monell v. New York City Dep't of Social Services, 436 U.S. 658, 690-91 (1978); Estate of Bailey v. County of York, 768 F.2d 503, 506 (3rd Cir.1985); Agresta v. City of Philadelphia, 694 F.Supp. 117, 122 (E.D.Pa.1988). However, "[i]t does not follow from these principles that the mere description of an act as a 'policy' or 'procedure' meets the threshold for a Section 1983 claim." Estate of Bailey, 768 F.2d at 506.

Here, the record is devoid of any evidence even suggesting that the County and its Prison have violated Plaintiff's rights in the manner delineated by this line of cases. For example, Plaintiff has not established any county-wide or prison-wide policy or custom resulting in deprivations of constitutional rights. Any policy, custom, or procedure must, by its very

nature, be recurrent in nature and be part of an ongoing pattern of activity. The Record states that Chester County Prison did not limit the use of crutches in all of its cells. Plaintiff, in fact, spent time in two such cells, and was not transferred to Block M until he requested the transfer. Block M did not allow crutches in the cells for security reasons. However, this was not the policy of Chester County, nor was it a prison-wide policy. Since we find that Plaintiff has failed to aver the existence of any Chester County policy, custom, or procedure which caused the plaintiff's alleged injury, we shall dismiss Count II of Plaintiff's Amended Complaint.

C. Count Three-Americans with Disabilities Act (ADA):

In Count Three of Plaintiff's Amended Complaint, he alleges that just after having bypass surgery on his left leg, he was unable to walk or stand without auxiliary aids, and as a result, was a qualified individual with a disability pursuant to 42 U.S.C. § 12131(2). He further alleges that, because Defendants denied him the use of his crutches or a wheelchair, he was unable to utilize many of the benefits that Chester County Prison provides to its inmates, including use of the phone, use of the general library, participating in the yard activities, eating daily meals, and retrieving his prescribed medications.⁵ Plaintiff contends that the denial of access to crutches and/or a wheelchair was done so for discriminatory reasons in violation of Section 12131 and the Fourteenth Amendment of the United States Constitution.

5. Plaintiff raises this ADA claim against "All Defendants," however, at no point does he support this claim as it applies to the EMSA Defendants. Plaintiff makes no reference to these defendants in its memorandum of law, nor does he provide evidence that the conduct of the EMSA Defendants precluded him from participating in the benefits of the services of the Prison. Also, claims that would be raised against the EMSA Defendants consist of allegations that they provided incompetent treatment for Plaintiff's medical condition. Such a complaint does not state a claim for relief under the ADA because "[t]he ADA does not create a remedy for medical malpractice." Bryant v. Madigan, 84 F.3d 246, 249 (7th Cir.1996). Therefore, I will not address Count III as it pertains to the EMSA Defendants.

Defendants respond by asserting that, inter alia, in the case at bar the limitation on Plaintiff's use of crutches was for security reasons and had nothing to do with the disability of the inmate. The crux of this argument is that Plaintiff was not discriminated against, simply because all of the inmates on Block M were restricted from storing crutches within their cells.

The United States Court of Appeals for the Third Circuit has held that the standard for liability under the ADA is the same as that of the Rehabilitation Act of 1973. McDonald v. Pennsylvania Dept. of Public Welfare, 62 F.3d 92, 94-95 (3d Cir.1995). Therefore, the elements of an ADA claim are: (1) that the plaintiff is an individual with a disability, (2) that the plaintiff is otherwise qualified for the program sought or would be qualified if the defendant made reasonable modifications to the program, and (3) that the plaintiff was excluded from the program solely by reason of his or her disability. Wagner v. Fair Acres Geriatric Center, 49 F.3d 1002, 1009 (3d Cir.1995).⁶

The ADA defines disability as: (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual, (2) a record of such impairment, or (3) being regarded as having such and impairment. 42 U.S.C. § 12101(2). As Defendants have not disputed whether or not Plaintiff is disabled under the ADA, the Court will assume that he is disabled.⁷

6. There is a fourth element to a claim under the Rehabilitation Act of 1973 that is not required under the ADA. This element--that the program receives federal funds--is not applicable to an ADA claim because the ADA does not require that the service, program or activity receive federal funds.

7. It seems clear that due to the condition of Plaintiff's leg, the severity of such condition is an example of a "physical impairment."

Section 12132 states:

Subject to the provisions of this subchapter, 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. The term “qualified individual” is defined as:

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. § 12131(2).

Therefore, in order to show a violation of the Americans with Disabilities Act, Plaintiff must show that he is a “qualified individual with a disability” and he is eligible to participate in the benefits of the “services, programs, or activities” of the Chester County Prison. Plaintiff has alleged that he was unable to utilize many of the benefits that Chester County Prison provides to its inmates, including use of the phone, use of the general library, participating in the yard activities, eating daily meals, and retrieving his prescribed medications. These allegations, in conjunction with contention that he was unable to walk without the aid of crutches or a wheelchair, enable the Court to treat Plaintiff as an inmate with a disability, while under a common understanding of the terms, the Prison and all of its facilities (i.e., the phone, the library, the yard, and meals) constitute services and programs of Chester County to which the ADA applies.

Therefore, the issue before the Court is whether Plaintiff was able to participate in the programs and activities in question, with or without reasonable accommodations from

Chester County Prison. Plaintiff provided the Court with excerpts from his deposition testimony regarding, inter alia, his incarceration at Chester County Prison. According to Plaintiff, he spent his first night in the infirmary, and the next day was transferred to K Block even. He was then transferred to K Block odd, and again to J Block. The Plaintiff was then asked, “[d]id you have a problem in J Block?” Plaintiff responded, “I had a problem that I couldn’t get up and down the steps with the crutches with my leg.” (Owens’ Dep. at 68.)

The deposition continues:

Q: And on January 30th did you put in a request requesting to be moved from J Block?

A: Yes.

Q: And why was that, because of the steps?

A: Because of the steps, getting up and down.

Q: Where did you want to be moved to?

A: Just to a flat where I didn’t have no steps. I think that’s when I went to K odd for a while.

Q: According to these records, you moved onto M odd or M Block.

A: I went to K Block first. They moved me to M Block at nighttime. I was on K odd first, and that’s -- it’s just a block for people that -- they’re being punished for something.

Q: Were you being punished for anything?

A: No.

Q: You were ultimately moved to M Block. And how was that?

A: It’s a block with people that has drug problems and stuff like that.

Q: Is it a flat block, though?

A: Yes.

Q: Is it a block where there’s several people that may have some chronic problems?

A: Health Problems?

Q: (nods head.)

A: I guess.

Q: Did you have any problems on M Block?

A: Other than getting around, no.

Q: Now, did you -- when did you start having problems getting around?

A: As soon as they took the crutches from me.

Q: Now, when you say as soon as they started taking the crutches away from you, was that as soon as you got into the facility?

A: Yeah, as soon as I got there, yeah, they took them.

Id. at 69-71. It is undisputed, and the Plaintiff's own deposition testimony supports the conclusion that the Prison did accommodate his request for a transfer due to his disability.

However, the record requires us to look further into it.

During his deposition, Plaintiff discussed his inability to enjoy the prison services (i.e., meals and phone calls.) The relevant testimony follows:

Q: When did you miss meals?

A: Any time they would open the doors, it was automatic, and your meals were placed on the tables.

Q: In the day room?

A: Which could be ten feet from you. It could be 20 feet from you. It all depends whether you got up and got to it fast enough. If I couldn't get up to stand on my leg, then I missed a meal because I couldn't get to it.

Q: Did you ever talk to the COs about this?

A: They didn't care.

Q: That's not my question. My question is, though, did you talk to the COs about it?

A: Yes.

Q: What did they tell you when you talked to them about it?

A: Tough luck.

...

Q: One of the other damages you claim is that you weren't able to use the library.

A: Well, I told you that was downstairs. With the condition of my leg I couldn't go downstairs.

Q: Did you ask your counselor for -- to go and get you some books from the library?

A: No.

...

Q: You claim that you were unable to use the phone.

A: That was another -- it was on the block, but yet it was another -- I don't know how you say in feet, 25 yards, 20 yards, 25 yards from my cell. If I couldn't drag myself to it, I couldn't get to the phone and I couldn't make a phone call.

Id. at 114-117.

Plaintiff claims that there is sufficient evidence from which a jury could decide that Chester County Prison discriminated against him by placing him on M Block. Defendants counter by stating that Plaintiff was not denied the use of his crutches, but was only restricted in the use of them in order to protect himself and other persons, as such aids can be used as weapons. As the record shows, when an inmate on M Block desired to go somewhere else in the Prison, other than the housing unit, then the inmate was allowed to use the crutches. However, in the case at bar, the Court is presented with a dispute of fact as to whether or not the crutches were, in fact, made readily available to Plaintiff. As the record shows, Plaintiff did request the crutches to assist his mobility, and was greeted with an officer's saying, "tough luck." As a result of this particular type of conduct (although the frequency of such conduct is not apparent), Plaintiff was deprived of the services and programs of the Chester County Prison. While the Court acknowledges that the Prison did honor Plaintiff's request to move to a one-level cell block, and it is clear that Plaintiff's crutches were stored for safety purposes, the Court holds that the ADA required the Chester County Prison to make the crutches available to Plaintiff when appropriate.⁸ Whether the Prison did is an issue of fact that is in dispute, and the Motion for Summary Judgment as to the ADA claim against Chester County must be denied.

Section 12131 (1)(A) defines a "public entity" as any State or local government. Therefore, Chester County is a public entity for ADA purposes. While there is some dispute throughout the federal courts as to whether or not an individual may be sued for violations of the

8. This is not to say that the Court believes that Plaintiff should have been accommodated upon every request for his crutches, for such would be unreasonable. However, when the evidence presents an issue of fact as to how far Plaintiff was able to walk without the aid of crutches, how far the dining area was from his cell, and how frequently the Prison disregarded his requests for the crutches, the Court is unable to treat these facts as immaterial for summary judgment purposes.

ADA, Plaintiff's ADA claim (Count III) will survive as it applies to Chester County.⁹ Plaintiff's ADA claim against Chester County Prison, the Officer Defendants and the EMSA Defendants is dismissed.

IV. CONCLUSION

Count One of Plaintiff's Amended Complaint pursuant to Title 42 U.S.C. § 1983 survives summary judgment because there is a material factual dispute as to whether or not Officer Defendants were deliberately indifferent to Plaintiff's medical needs in refusing to convey his requests for pain medication. However, Count One, as it pertains to the EMSA Limited Partnership and Dr. Butler, is dismissed for reasons stated above.

Count Two of Plaintiff's Amended Complaint pursuant to Section 1983 is dismissed as Plaintiff has failed to aver the existence of any Chester County policy, custom, or procedure which caused the plaintiff's alleged injury.

Count Three of Plaintiff's Amended Complaint survives summary judgment as there exists a genuine issue of material fact as to whether or not Chester County Prison made the provided crutches to Plaintiff when appropriate. For reasons stated above, while Plaintiff's ADA claim is against "all Defendants," his claim will survive only as it pertains to Chester County.

An appropriate Order follows.

9. In 1998, the United States Supreme Court ruled that the plain text of Title II of the ADA unambiguously extends to state prison inmates. Pennsylvania Dept. Of Corrections v. Yeskey, 118 S.Ct. 1952, 1956 (1998).

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

JOSEPH OWENS,	:	
Plaintiff,	:	
	:	
v.	:	
	:	CIVIL ACTION
CHESTER COUNTY,	:	
SUPERINTENDENT OF CHESTER	:	
COUNTY PRISON, CORRECTIONAL	:	NO. 97-1344
OFFICER LENNON, UNKNOWN	:	
CORRECTIONAL OFFICER 2,	:	
UNKNOWN CORRECTIONAL OFFICER	:	
3, EMSA LIMITED PARTNERSHIP,	:	
AND DR. CHARLES BUTLER,	:	
Defendants.	:	

ORDER

AND NOW, this 28th day of January, 2000, upon consideration of Defendants Chester County, Superintendent of Chester County Prison, Correctional Officer Lennon, Unknown Correctional Officer 2, Unknown Correctional Officer 3, EMSA Limited Partnership, and Dr. Charles Butler's Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, and Plaintiff Joseph Owens' Response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED in part, and DENIED in part. More specifically, it is further ORDERED that:

- (1) Count One, as it pertains to Defendants Chester County, Superintendent of Chester County Prison, EMSA Limited Partnership, and Dr. Charles Butler is DISMISSED.

(2) Count One, as it pertains to Correctional Officer Lennon, Unknown Correctional Officer 2, Unknown Correctional Officer 3 survives the Motion.

(3) Count Two is hereby DISMISSED.

(4) Count Three, as it pertains to Chester County Prison, Correctional Officer Lennon, Unknown Correctional Officer 2, Unknown Correctional Officer 3, EISA Limited Partnership, and Dr. Charles Butler is hereby DISMISSED.

(5) Count Three, as it pertains to Chester County, survives the Motion.

BY THE COURT:

RONALD L. BUCKWALTER, J.