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

JEFFREY JOHNSON,	:	
Plaintiff	:	**CIVIL ACTION**
	:	**NO. 04-1967**
v.	:	
	:	
ARIMAS MARTINEZ (H.S.A.), JOSEPH ZAGAME (A.H.S.A.), and PATRICIA HOFFENRICA (R.N.),	:	
Defendants	:	
	:	

MEMORANDUM OPINION AND ORDER

RUFE, J. **January 19, 2006**

Plaintiff Jeffrey Johnson ("Johnson"), an inmate in the federal prison system, brings this civil rights action against prison medical health officials and staff for their alleged failure to attend to a severe asthma attack he suffered on July 5, 2002. Presently before the Court is Defendants' Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment. For the reasons that follow, the Court denies the Motion.

I. FACTUAL BACKGROUND

Johnson is currently incarcerated at the United States Penitentiary in Beaumont, Texas. From December 5, 2001 to November 22, 2002, Johnson was incarcerated at the Federal Detention Center in Philadelphia, Pennsylvania (the "FDC"). Johnson has been an asthmatic since birth. Upon entering the FDC, Johnson underwent a routine medical examination. During the examination, Johnson informed the prison medical staff of his asthma. As a result, prison authorities

allowed Johnson to keep an inhaler on his person at all times, except for a few months in 2002.[1]

Prior to July 2002, Johnson suffered three asthma attacks for which he immediately required and received medical attention from FDC staff. At approximately midnight on July 5, 2002, Johnson suffered another severe attack. At that time, Johnson was in a segregated housing cell with another prisoner, James Dorsey ("Dorsey"), and he did have his inhaler. When Johnson began experiencing the asthma attack, he pushed the duress button in his cell to request medical assistance. Shortly thereafter, Defendants Arimas Martinez ("Martinez"), Joseph Zagame ("Zagame"), and Patricia Hoffenrica ("Hoffenrica")—all employees of the FDC's Medical Health Services Department—arrived at Johnson's cell and handcuffed Johnson and Dorsey. Johnson, showing obvious signs of discomfort, requested a wheelchair. Martinez denied Johnson's request, stating that no wheelchair was available and ordering Johnson to walk to the infirmary to receive treatment. Johnson indicated he could not walk and repeated his request for a wheelchair. Defendants again denied his request. They placed Johnson back in his cell and left. At no point did any of the Defendants check Johnson's lungs with a stethoscope, as had been the normal procedure for his previous attacks.

Four hours later, after a shift change, a physician's assistant approached Johnson's cell. Johnson was barely able to speak, so Dorsey explained Johnson's medical condition to the assistant. Johnson was immediately placed in a wheelchair, taken to the infirmary, and given a shot of solumedral and breathing assistance. When Johnson did not respond to this treatment, he was taken to the emergency room at Thomas Jefferson Hospital. There, he was intubated for six days

[1] The Amended Complaint and the papers relating to this Motion do not specify why Johnson was not allowed to have his inhaler during those months.

and listed in critical condition. He remained at the hospital under doctor's care for an additional twelve days.

On May 5, 2004, Johnson initiated this lawsuit by filing a motion for leave to proceed *in forma pauperis*. The Court granted his motion, and Johnson filed a *pro se* Complaint on June 28, 2004. The Court subsequently referred this matter to the Prisoner Civil Rights Panel for the Eastern District of Pennsylvania for possible appointment of counsel. Counsel was appointed, and Johnson's attorneys filed an Amended Complaint on October 20, 2004. Due to a lengthy delay in service of the Amended Complaint, Defendants' answers were not all filed until June 16, 2005.

On August 16, 2005, Defendants filed the Motion presently under consideration. By stipulated order, the parties agreed to postpone discovery until the Court's ruling on the Motion. Accordingly, although this case began in 2004, only limited discovery has occurred to date.

II. STANDARD OF REVIEW

Defendants' Motion seeks judgment on the pleadings or, in the alternative, summary judgment. The Court declines to entertain Defendants' request for summary judgment at this time because discovery has barely begun. "The [Third Circuit] has long recognized the importance of discovery in the successful prosecution of civil rights complaints."[2] In the absence of full discovery, it would be practically difficult, as well as unfair to Johnson, to entertain summary judgment at this early stage of the litigation. Therefore, the Court will only consider Defendants' request for

[2] Alston v. Parker, 363 F.3d 229, 232 (3d Cir. 2004). The special importance of discovery in this context arises from the informational disadvantage prisoner plaintiffs typically face: most evidence is in the exclusive possession of defendant officials. See id. at 233 n.6; Colburn v. Upper Darby Township, 838 F.2d 663, 666-67 (3d Cir. 1988).

judgment on the pleadings.

Judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c), is governed by the same standard of review as a Rule 12(b)(6) motion to dismiss.[3] That standard requires the Court to "accept as true all the allegations set forth in the complaint, and . . . draw all reasonable inferences in the plaintiff's favor."[4] The Court may dismiss the complaint "only if the plaintiff 'can prove no set of facts in support of his claim which would entitle him to relief.'"[5] The Court is not required, however, to credit a complaint's "bald assertions" or "legal conclusions."[6]

Furthermore, the Third Circuit has elaborated on this standard in the specific context of a motion to dismiss a prisoner civil rights complaint. In Alston v. Parker, the Third Circuit held that when reviewing a motion to dismiss a prisoner civil rights suit, the complaint must be "considered not under a heightened pleading requirement, but under the more liberal standards of notice pleading."[7] The court continued: "[A] plaintiff need not plead facts. To withstand a 12(b)(6) motion, a plaintiff need only make out a claim upon which relief can be granted. If more facts are necessary to resolve or clarify the disputed issues, the parties may avail themselves of the civil discovery mechanisms under the Federal Rules."[8]

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[3] See Turbe v. Gov't of Virgin Islands, 938 F.2d 427, 428 (3d Cir. 1991).

[4] Ford v. Schering-Plough Corp., 145 F.3d 601, 604 (3d Cir. 1998).

[5] Id. (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

[6] In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1429-30 (3d Cir. 1997).

[7] Alston, 363 F.3d at 233 (explaining that prisoner civil rights complaints need only comply with Rule 8(a)'s simplified pleading standard).

[8] Id. at 233 n.6.

III. DISCUSSION

In his Amended Complaint, Johnson asserts a civil rights claim against Defendants based on Estelle v. Gamble, which held that federal employees' "deliberate indifference to serious medical needs of prisoners" violates the Eighth Amendment.[9] "The standard enunciated in Estelle is two-pronged: '[i]t requires deliberate indifference on the part of the prison officials and it requires the prisoner's medical needs to be serious.'"[10]

Defendants argue that Johnson's complaint should be dismissed for three reasons: (1) sovereign immunity bars Johnson's claim against Defendants in their official capacity; (2) Johnson fails to state a claim because he has not alleged that Defendants were deliberately indifferent to his serious medical need; and (3) qualified immunity bars Johnson's claim against Defendants in their personal capacities.

Johnson concedes that sovereign immunity bars his claim against Defendants in their official capacity. The Court, therefore, is left only to examine Defendants' remaining two arguments.

A. Failure to State a Claim

Defendants argue that Johnson fails to state a claim under Estelle because he has not alleged that they were deliberately indifferent to his severe asthma, which Defendants concede is a serious medical need. Defendants contend that Johnson has, at best, pleaded "only such a non-actionable 'difference of opinion' or 'medical negligence' rather than a deprivation of Eighth

[9] 429 U.S. 97, 104 (1976). Although the Amended Complaint premises its civil rights claim on 42 U.S.C. § 1983, Defendants correctly point out Johnson's claim should be premised on Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), since Defendants are federal (not state) officials.

[10] Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987) (quoting West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978)).

Amendment proportions."[11]

Although deliberate indifference is most clearly established when a federal employee intentionally inflicts pain on a prisoner, the Third Circuit has recognized other scenarios that satisfy Estelle.[12] In Monmouth County Correctional Institutional Inmates v. Lanzaro, the Third Circuit identified two such scenarios: (1) "[w]here prison authorities deny reasonable requests for medical treatment . . . and such denial exposes the inmate 'to undue suffering or the threat of tangible residual injury'"[13]; and (2) "where 'knowledge of the need for medical care [is accompanied by the] . . . intentional refusal to provide that care.'"[14]

Here, taking Johnson's allegations as true, the Amended Complaint sufficiently pleads "deliberate indifference" under the scenarios set forth in Monmouth County. Johnson's request for medical treatment of his asthma was reasonable, as he alleges he had suffered similar attacks in the past while in FDC custody and that those attacks had received treatment. Moreover, Johnson alleges he was in obvious discomfort during the attack. Accordingly, the Defendants' denial of treatment simply because Johnson requested a wheelchair, including the Defendants' failure to perform a routine check of Johnson's lungs with a stethoscope, exposed Johnson to undue suffering and tangible injury.

Since Johnson is not required to plead specific facts establishing deliberate indifference at this early stage, the Defendants' Motion is without merit. Given the well-pleaded

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[11] Defs.' Mot. for J. on the Pleadings [Doc. #33] at 11.

[12] See Spruill v. Gillis, 372 F.3d 218, 235 (3d Cir. 2004).

[13] Monmouth County, 834 F.2d at 346 (quoting Westlake v. Lucas, 537 F.2d 857, 860 (6th Cir. 1976)).

[14] Id. (quoting Ancata v. Prison Health Servs., 769 F.2d 700, 704 (11th Cir. 1985)).

allegations of the Amended Complaint and the special importance of discovery in prisoner civil rights matters, there is no basis for dismissing Johnson's case for failure to state a claim.

B. Qualified Immunity

Defendants also argue that even if Johnson states a claim they are entitled to qualified immunity. Government officials performing discretionary functions are generally entitled to qualified immunity from liability provided their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known."[15] The Supreme Court has further clarified:

> For a constitutional right to be clearly established, its contours "must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unlessthe very action in question has previously been held unlawful, see Mitchell [v. Forsyth, 472 U.S. 511,] 535, n. 12, 105 S.Ct. 2806, 86 L.Ed.2d 411; but it is to say that in the light of pre-existing law the unlawfulness must be apparent." Anderson v. Creighton, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987).[16]

Courts have found qualified immunity where prison officials have adhered to BOP medical policy.[17] Defendants have the burden of showing they are entitled to qualified immunity.[18]

The essence of Defendants' qualified immunity argument is two-fold. First, the "deliberate indifference" jurisprudence does not "plainly require[] prison medical staff to provide an asthmatic inmate with a wheelchair notwithstanding the staff's judgment that the inmate is

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[15] Harlow v. Fitzgerald, 457 U.S. 800, 817-18 (1982).

[16] Hope v. Pelzer, 536 U.S. 730, 739 (2002).

[17] See, e.g., Farmer v. Moritsugu, 163 F.3d 610, 614 (D.C. Cir. 1998).

[18] See Beers-Capitol v. Whetzel, 256 F.3d 120, 142 n.15 (3d Cir. 2001).

adequately breathing and capable of walking."[19] Second, Defendants were merely following FDC and/or Federal Bureau of Prisons ("BOP") policy when they insisted that Johnson be treated in the infirmary rather than his segregated housing cell.

Here, it is clear that failure to provide any checkup or treatment where a known asthmatic is in clear discomfort is unlawful in light of Estelle. Furthermore, although it may be the case that Defendants merely followed FDC or BOP policy, the Court lacks an adequate factual foundation upon which to assess that ground for qualified immunity. Defendants' argument is better addressed on summary judgment after full discovery.

IV. CONCLUSION

For the forgoing reasons, the Court denies Defendants' Motion with prejudice insofar as it seeks judgment on the pleadings. The Court further denies Defendants' Motion without prejudice insofar as it seeks summary judgment, since such a request is premature until discovery is complete.

[19] Defs.' Mot. for J. on the Pleadings at 19.

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Defendants	:	

ORDER

AND NOW, this 19th day of January 2006, upon consideration of Defendants' Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment [Doc. #33] and Plaintiff's Response thereto [Doc. #35], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** that Defendants' Motion is **DENIED** as follows:

1. Defendants' request for judgment on the pleadings is **DENIED** with prejudice; and
2. Defendants' request for summary judgment is **DENIED** without prejudice as premature.

It is further **ORDERED** that discovery shall resume and, in accordance with the Stipulated Order of August 29, 2005 [Doc. #34], all fact discovery shall be completed within ninety (90) days of this Order.

BY THE COURT:

CYNTHIA M. RUFE, J.