

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

UNITED STATES OF AMERICA : CIVIL ACTION  
ex rel. EFRAIN REYES :  
 :  
v. :  
 :  
EDWARD SWEENEY, et al. : NO. 97-3922

**MEMORANDUM**

**J. M. KELLY, J.**

**JUNE 30, 1999**

Presently before the Court is Plaintiff Efrain Reyes' renewed motion for appointment of counsel, which has been denied twice before. Plaintiff states this appointment is necessary to assist him in the prosecution of his claim that he unconstitutionally has been denied appropriate medical treatment, which he maintains is the prescription of special diet food. He believes he has stomach ulcers that prison cafeteria food irritate, and he therefore must resort to food found only in the prison commissary for his sustenance.

Plaintiff apparently hopes to state an Eighth Amendment claim of deliberate indifference, and to do so he must prove a prison official or employee has acted with deliberate indifference to his serious medical need. See Estelle v. Gamble, 429 U.S. 97, 106 & n.14 (1976); Gibbs v. Cross, 160 F.3d 962, 966 (3d Cir. 1998). Among the factors a court may consider in determining whether a medical need was a serious one is what effect indifference visited on the detainee. See Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987), cert. denied, 486 U.S. 1006 (1988). The detainee has shown a serious medical condition if the effect of a failure to treat was "substantial and unnecessary suffering, injury, or death." Colburn v. Upper Darby Township, 946 F.2d 1017, 1023 (3d Cir. 1991). Mere medical malpractice is not enough. Parham v. Johnson, 126 F.3d 454, 458 n.7 (3d Cir. 1997).

This claim is not sufficiently meritorious to warrant the appointment of counsel, see id. at 457, and the Court will deny Plaintiff's motion. Plaintiff's alleged need to purchase food to soothe whatever stomach condition he may suffer from does not even remotely approach the level of serious medical condition. In view of the underwhelming merit of Plaintiff's legal position, the Court finds it is not necessary to appoint counsel.

Moreover, Plaintiff has invested only a minimal effort to secure his own counsel. He alleges he has contacted one attorney, who he would like appointed, but has not gone any further. He has filed motions ably, and appears to be well positioned to conduct discovery. See id. at 457-58. Plaintiff's is not a case on which the "precious commodity" of volunteer lawyer services should be spent. See id. at 458.

An Order follows.

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**ORDER**

AND NOW, this 30th day of June, 1999, upon consideration of Plaintiff Efrain Reyes' Motion for Assignment of Counsel (Document No. 29), it is hereby **ORDERED** Plaintiff's motion is **DENIED**.

BY THE COURT:

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JAMES McGIRR KELLY, J.