UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Court of Appeals for the
Seventh Circuit

PLRA C.R. 3(b) FINAL ORDER

April 13, 2021

No. 20-3372	BRALEN LAMAR JORDAN, Plaintiff - Appellant v. C. RIVERS, et al., Defendants - Appellees

Originating Case Information:

District Court No: 3:20-cv-50297
Northern District of Illinois, Western Division
District Judge Iain D. Johnston

On March 12, 2021, this court issued an order directing the appellant to show cause as to why this appeal should not be dismissed for failure to tender the PLRA memorandum. As of this date, the appellant has neither paid the docketing fee nor filed a response explaining his inability to do so. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED** for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of $505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b). Newlin v. Helman, 123 F.3d 429, 433* (7th Cir. 1977).

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

Bralen Lamar Jordan (22702-009),	)	
	)	
Plaintiff,	)	
	)	Case No. 20 C 50297
v.	)	
	)	Hon. Iain D. Johnston
C. Rivers, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's amended complaint [20] does not state a valid federal claim and is dismissed. *See* 28 U.S.C. § 1915A. The dismissal of this case is Plaintiff's third dismissal under 28 U.S.C. § 1915(g). Plaintiff's motion to amend his complaint piecemeal [23] is stricken for the reasons stated in the October 14, 2020 order. Any other pending motions are denied as moot. This case is closed. Final judgment shall enter.

STATEMENT

Plaintiff's amended complaint is before the Court. The Court again conducts its initial review pursuant to 28 U.S.C. § 1915A, which requires courts to screen complaints filed by prisoners to ensure they state a valid claim against parties not immune from suit. *See Jones v. Bock,* 549 U.S. 199, 214 (2007); *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013). As explained in previous orders, a complaint must "give the defendant fair notice of what the claim is and the grounds upon which it rests" and provide sufficient facts "to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). On initial review, courts "accept the well-pleaded facts in the complaint as true," *Alam v. Miller Brewing Co.,* 709 F.3d 662, 665-66 (7th Cir. 2013), and construe *pro se* complaints liberally. *See Erickson v. Pardus,* 551 U.S. 89, 94 (2007) (per curiam). The Court, however, properly considers both the complaint and other public records in reviewing the complaint. *See Olson v. Champaign County, Ill.*, 784 F.3d 1093, 1097 n.1 (7th Cir. 2015) ("[W]e may take judicial notice of public records not attached to the complaint in ruling on a motion to dismiss under Rule 12(b)(6).") Here, there are many docket entries that undermine Plaintiff's alleged claims.

As in the original complaint, Plaintiff's claims are somewhat difficult to parse. It is apparent, however, that Plaintiff believes he is receiving deficient medical care at USP Thomson for several of his chronic medical conditions, including diabetes, hypertension, and back pain. Plaintiff seeks to hold National Inmate Appeal Administrator Ian Connors, Thomson Health

Services Administrator Mrs. Pence, and Thomson Nurse Practitioner Teresa Ross responsible for the alleged deficiencies. (Dkt. 20.)

First, Plaintiff alleges Defendant Pence was deliberately indifferent to his medical needs because inmates with chronic medical conditions are generally seen by nurse practitioners rather than doctors. (Dkt. 20, pg. 8.) Plaintiff also alleges his medical records contain false information and that he needs insulin to treat his diabetes, aspirin for high blood pressure, and an x-ray for "fractured muscles" in his back. (*Id.*, pgs. 8-9.)

As for Defendant Ross, Plaintiff again alleges he should have received an appointment with a doctor, rather than Ross who is a nurse practitioner. (Dkt. 20, pg. 10.) Plaintiff states he discussed his diabetes lab work with Ross on July 30, 2020, and told her that he believed his A1C reading was unusually high. (*Id.*) In response, Ross ordered a second reading on August 3, 2020. (*Id.*) Plaintiff also told Ross he was having blurry vision and requested eye drops. (*Id.*) Ross told Plaintiff she would look into ordering him eye drops. (*Id.*, pg. 11.) Lastly, Plaintiff told Ross he was having headaches after "the concussion of a hard fall in his cell." (*Id.*) Ross told Plaintiff she was unable to order him ibuprofen, but that he could order some from the commissary. (*Id.*) Plaintiff, however, explained that he is indigent and cannot afford commissary items. (*Id.*)

Lastly, Plaintiff states he submitted grievances regarding his medical care to the Bureau of Prisons General Counsel's Office. (Dkt. 20, pg. 6.) Plaintiff does not clearly identify the issues he was grieving, but it appears to have related primarily to his diabetes. (*Id.*) Defendant Ian Connors reviewed Plaintiff's grievances but does not appear to have directed Thomson medical staff to make any changes to Plaintiff's medical care on the basis of those grievances. (*Id.*, pg. 7.) Based on his review of the grievances, Plaintiff argues Connors was aware of his medical conditions but did not remedy the problems Plaintiff identified. (*Id.*, pgs. 6-7.)

Plaintiff's amended complaint suffers from a number of flaws and fails to state a claim for relief. Initially, the amended complaint's allegations indicate no personal involvement in Plaintiff's medical care by Defendant Connors. Although Plaintiff alleges Connors reviewed grievances about his medical treatment, "non-medical personnel not directly involved in an inmate's medical care are usually not liable for their review and/or denial of medical grievances." *Ruiz v. Williams*, 144 F.Supp.3d 1007, 1013 (N.D. Ill. 2015); *see also Gevas v. Mitchell*, 492 F. App'x 654, 656 (7th Cir. 2012) (dismissing claim where "[Plaintiff] alleges no personal involvement by the warden outside of the grievance process"); *Owens v. Hinsley*, 635 F.3d 950, 953 (7th Cir. 2011) (alleged mishandling of a prisoner's grievances by persons who did not cause or participate in underlying conduct does not state claim as there is no constitutional right to prison grievance system). Moreover, "a defendant cannot be liable under *Bivens* on the basis of *respondeat superior* or supervisor liability, rather there must be individual participation and involvement by the defendant." *Arnett v. Webster*, 658 F.3d 742, 757 (7th Cir. 2011).

Defendant Connors was not involved with Plaintiff's medical treatment apart from the grievance process. This involvement, however, is insufficient to maintain a claim against Connors for deliberate indifference. *George v. Smith*, 507 F.3d 605, 609-10 (7th Cir. 2007) (affirming the denial of a grievance "about a completed act of misconduct" is not sufficient involvement to support a § 1983 claim against the supervisory official who denied the grievance). *Id.*

Plaintiff's allegations also fail to state a claim that Defendants Pence and Ross were deliberately indifferent to his serious medical needs. Prison officials violate the Eighth Amendment's proscription against cruel and unusual punishment when they display 'deliberate indifference to serious medical needs of prisoners.'" *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). To state a claim based on deliberate indifference, an inmate must first show that "his medical condition is 'objectively, sufficiently serious." *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). He must then show that prison officials were deliberately indifferent to that condition. *Id.* (quoting *Farmer*, 511 U.S. at 834) (citation and quotation marks omitted).

Inmates, however, are not entitled to "unqualified access to healthcare," *Holloway v. Delaware Cty. Sheriff*, 700 F.3d 1063, 1073 (7th Cir. 2012), or the best care possible, *Arnett*, 658 F.3d at 754. Neither medical malpractice, nor negligence, nor even gross negligence rise to the requisite culpable state of mind for deliberate indifference, which is akin to criminal recklessness. *See, e.g., Cesal v. Moats*, 851 F.3d 714, 725 (7th Cir. 2017); *King v. Kramer*, 680 F.3d 1013, 1018 (7th Cir. 2012). Thus, a prison medical provider is not deliberately indifferent simply because she offers a different course of treatment than the one requested by the inmate. *Snipes v. DeTella*, 95 F.3d 586, 591 (7th Cir. 1996).

Plaintiff's allegations that he has been deprived of insulin, aspirin, and x-rays do not indicate that Thomson medical staff have been deliberately indifferent to his medical conditions. As noted in the order screening Plaintiff's first complaint, Plaintiff has a diabetes diagnosis, but he has never been prescribed insulin and there has been "no clinical indication for insulin" while Plaintiff has been housed at USP Thomson. *See* May 18, 2020 Motion (ECF #18), *Jordan v. Sawyor*, No. 3:20-cv-50121, at 2 (N.D. Ill) (Johnston, J.); Amended Complaint (ECF #18), *Jordan v. Samuels*, No. 3:20-cv-50211, at 10 (N.D. Ill.) (Johnston, J). Plaintiff has instead been prescribed atorvastatin, lisinopril, and metformin for his diabetes. *See* May 18, 2020 Motion (ECF #18), *Jordan v. Sawyor*, No. 3:20-cv-50121, at 4-5 (N.D. Ill) (Johnston, J.). Plaintiff was provided a six-month supply of these medications at least as of February 4, 2020, and he had a second medical evaluation of his chronic conditions on July 30, 2020. (Dkt. 17-1, pg. 16.) During the July 30, 2020 evaluation, Plaintiff's A1C levels were at 5.8%,[1] indicating Plaintiff may have prediabetes, which is generally treated with changes in diet, exercise, and medications such as metformin. (*Id.*) *See* Prediabetes, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/prediabetes/diagnosis-

[1] Plaintiff alleges this number was misreported in his medical records, but he offers no evidence to support this assertion. Thus, to the extent Plaintiff may be attempting to state a claim that any defendant included false information in his records, the Court discerns no foundation for that claim.

treatment/drc-20355284 (last visited November 10, 2020). Thus, the fact that medical staff at Thomson have not provided Plaintiff with insulin alone does not indicate they have failed to appropriate treat his diabetes.

Similarly, although Plaintiff appears to believe he requires aspirin to treat his high blood pressure, the lisinopril and metformin used to treat his diabetes is also prescribed to treat his or hypertension. (Dkt. 19-1, pg. 4.) The facts in the amended complaint provide no indication that Plaintiff also required aspirin to alleviate his high blood pressure. Likewise, Plaintiff complains that he needs an x-ray for his back, but x-rays were taken of his back on February 20, 2020—which were unremarkable—and additional x-rays were scheduled for April 10, 2020. (*Id.*) Plaintiff's health care providers have recommended Plaintiff attempt to lose weight to treat his back pain. (Dkt. 17-1, pg. 16.) No facts suggest Plaintiff requires additional x-rays.

Neither can the Court conclude that prison officials were deliberately indifferent because Plaintiff sees a nurse practitioner for some of his medical appointments, rather than a doctor. Nurse practitioners are highly skilled medical professionals trained to address many medical issues and not every ailment requires an appointment with a physician. *See, e.g., Urquhart v. Roeseler*, No. 18-CV-879-JPS-JPS, 2019 WL 4305896, at *2 (E.D. Wis. Sept. 11, 2019) (collecting cases explaining that prisoners are not entitled to demand specific care, such as seeing doctor rather than nurse); *Cook v. S. Health Partners,* No. 4:08CV-P128-M, 2009 WL 1409713, at *2 (W.D. Ky. May 20, 2009) (explaining that a prisoner is not "constitutionally entitled to see a doctor every time he wishes.")

Lastly, with regard to Plaintiff's claim that Ross did not provide him ibuprofen for a headache, the facts in the amended complaint do not establish that he had a potentially serious medical need such that Ross' refusal violated Plaintiff's constitutional rights. "Not 'every ache or pain or medically recognized condition' constitutes a serious medical need." *Gutierrez v. Peters*, 111 F.3d 1364, 1372 (7th Cir. 2008); *see also Cooper v. Casey*, 97 F.3d 914, 916 (7th Cir. 1996) (explaining that "minor aches and pains" do not rise to the level of a serious medical condition"). "A serious medical condition is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." *Hayes v. Snyder*, 546 F.3d 516, 522-23 (7th Cir. 2008) (quoting *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005)). "Failure to 'dispense bromides for the sniffles or minor aches and pains or a tiny scratch or a mild headache or minor fatigue—the sorts of ailments for which many people who are not in prison do not seek medical attention—does not . . . violate the Constitution.'" *Zentmyer v. Kendall County, Ill.*, 220 F.3d 805, 810 (7th Cir. 2000) (quoting *Cooper*, 97 F.3d at 916).

Here, Plaintiff believes his headache was caused by a fall in his cell. He appears to be suggesting he may have had a concussion, but it is unclear why he believes this beyond mere speculation. Given that Plaintiff requested only an over-the counter pain killer for his headache, the facts in the amended complaint do not suggest Plaintiff was experiencing a pain level that

would constitute a serious medical need. *See, e.g., Gibson v. Ramsey*, No. 99 C 5315, 2004 WL 407025, at *7 (N.D. Ill. Jan. 29, 2004) (plaintiff who woke up with back pain that was alleviated by Tylenol did not have an objectively serious medical condition); *Watson–El v. Wilson*, No. 08–7036, 2010 WL 3732127 *13 (N.D. Ill. Sep. 15, 2010) (pain treated with over-the-counter medication did not constitute a serious medical need). Consequently, Plaintiff fails to allege facts sufficient to state a claim based on his headache.

Although it is clear Plaintiff believes he requires medical care beyond what he is already receiving, mere disagreement with the medical treatment he has received while incarcerated does not give rise to a claim for deliberate indifference. *Johnson v. Doughty*, 433 F.3d 1001, 1013 (7th Cir. 2006). "[A]n inmate is not entitled to demand specific care." *Arnett v. Webster,* 658 F.3d 742, 754 (7th Cir. 2011). Rather, inmates are entitled to "reasonable measures to meet a substantial risk of serious harm." *Id.* The care Plaintiff has received for his medical conditions at Thomson does not appear to fall below this standard. In fact, quite the contrary. Plaintiff's submissions demonstrate that Thomson's medical staff regularly monitor his chronic conditions. Plaintiff's description of his interactions with Defendant Ross, in particular, show that medical providers are responsive to Plaintiff's medical needs and frequently provide him with the specific care he requests. Consequently, Plaintiff fails to state a claim for deliberate indifference against Pence and Ross.

For these reasons, Plaintiff may not proceed on his amended complaint. The Court previously provided Plaintiff a chance to amend and outlined the basic requirements Plaintiff must satisfy to state a claim, however, the present amended complaint still does not meet those requirements. The Court has considered whether to allow additional amendment, *Tate v. SCR Med. Transp.*, 809 F.3d 343, 346 (7th Cir. 2015), but given the allegations in both the original and amended complaint, Plaintiff appears to have stated his best case and further amendment would be futile. Thus, the Court dismisses the amended complaint with prejudice. *See Health Cost Controls v. Skinner*, 44 F.3d 535, 537 (7th Cir. 1995) ("[I]f a plaintiff fails to properly allege a claim for relief brought under a federal statute, the case should be dismissed under Federal Rule of Civil Procedure 12(b)(6)[.]").

The dismissal of this case counts as a dismissal under 28 U.S.C. § 1915(g). This is Plaintiff's third "strike," following *Jordan v. Connors*, No. 6:20-cv-0164 (E.D. Ky) (Wilhoit, J.) (dismissed for failure to state a claim on September 14, 2020), and *Jordan v. Samuels*, No. 3:20-cv-50211 (N.D. Ill.) (Johnston, J.) (dismissed for failure to state a claim on November 2, 2020). Going forward, Plaintiff may not file suit in federal court (except a petition for habeas corpus relief) without prepaying the filing fee unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Plaintiff also must disclose the fact that he has "struck out" under § 1915(g). *See Ammons v. Gerlinger*, 547 F.3d 724, 725 (7th Cir. 2008) ("A litigant who knows that he has accumulated three or more frivolous suits or appeals must alert the court to that fact."). Plaintiff's failure to disclose this information when he files any new federal lawsuit will result in immediate dismissal of the action with prejudice. *Id.*; *see also Sloan v. Lesza*, 181 F.3d 857, 858-

59 (7th Cir. 1999) (explaining that "fraud" on the Court must "lead to immediate termination of the suit").

Final judgment will be entered. If Plaintiff wishes to appeal, he must file a notice of appeal with this Court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). If Plaintiff appeals, he will be liable for the $505.00 appellate filing fee regardless of the appeal's outcome. *See Evans v. Ill. Dep't of Corr.*, 150 F.3d 810, 812 (7th Cir. 1998). If the appeal is found to be non-meritorious, Plaintiff could be assessed another "strike" under § 1915(g). If Plaintiff seeks leave to proceed *in forma pauperis* on appeal, he must file a motion for leave to proceed *in forma pauperis* in this Court and state the issues he intends to raise on appeal. *See* Fed. R. App. P. 24(a)(1).

Plaintiff need not bring a motion to reconsider this Court's ruling to preserve his appellate rights. However, if Plaintiff wishes the Court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within twenty-eight days of the entry of this judgment. *See* Fed. R. Civ. P. 59(e). The time to file a motion pursuant to Rule 59(e) cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A timely Rule 59(e) motion suspends the deadline for filing an appeal until the Rule 59(e) motion is ruled upon. *See* Fed. R. App. P. 4(a)(4)(A)(iv). Any Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A Rule 60(b) motion suspends the deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within twenty-eight days of the entry of judgment. Fed. R. App. P. 4(a)(4)(A)(vi).

Date: November 12, 2020

By: _____
Iain D. Johnston
United States District Judge