UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BOOKER TORRENCE PLAINTIFF,	:	
v.	:	CIV. NO. 3:96 CV 299 (HBF)
CHRISTOPHER PELKEY, ET AL. DEFENDANTS	:	

RULING ON DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff brought this action pursuant to 42 U.S.C. § 1983, alleging that defendants violated his right under the Eighth Amendment to the United States Constitution to be free from deliberate indifference to his medical needs. Defendants are the State of Connecticut Department of Corrections, Christopher Pelkey, Warden at the Cheshire Correctional Facility ("Cheshire"); and Steven Stein, the medical doctor responsible for the provision of medical services to the inmates at Cheshire. Plaintiff seeks money damages as well as injunctive relief. Pending is Defendants' Motion for Judgment on the Pleadings [Doc. # 88]. For the reasons discussed below, defendants' motion is GRANTED in part and DENIED in part.

STANDARD

The standards applicable to a motion for judgment on the pleadings under Rule 12(c) are identical to those for a Rule 12(b)(6) motion to dismiss. See Irish Lesbian & Gay Org. v.

Giuliani, 143 F.3d 638, 644 (2d Cir. 1998); Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir.) (citation omitted), cert. denied, 513 U.S. 816 (1994). When considering a Rule 12(b) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686 (1974); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. Hishon v. King & Spaulding, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232 (1984) (citations omitted); Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957); Frasier v. General Elec. Co., 930 F.2d 1004, 1007 (2d Cir. 1991). "The issue [on a motion to dismiss] is not whether plaintiff will prevail, but whether he is entitled to offer evidence to support his claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990), citing Scheuer, 416 U.S. at 236, 94 S. Ct. at 1686. Judgment on the pleadings should be granted if the movant "is entitled to judgment as a matter of law." Burns Int'l Security Servs. v. International Union, 47 F.3d 14, 17 (2d Cir. 1994).

BACKGROUND

Keeping this standard in mind, the court accepts as true the following allegations taken from the second amended complaint.

In January 1994, plaintiff was received into custody by the State of Connecticut Department of Corrections ("DOC"). [Doc. # 82, para. 10.] A medical exam performed by DOC staff on January 24, 1994, found no evidence that plaintiff suffered from hepatitis, pancreatitis, or diabetes symptoms. [Para. 11.]

From May 25 through June 1, 1995, plaintiff made daily complaints to DOC staff that he felt "acutely ill," described his symptoms as "blurred vision, dry throat and mouth, uncontrollable thirst, abnormally frequent need to urinate, fatigue, a 'metallic' breath odor, stomach pain and tenderness, dizziness, and a general feeling of being acutely ill," and requested medical attention. [Paras. 33-42.] During this period, defendants provided no medical care to plaintiff. [See id.]

On June 2, 1995, plaintiff was permitted to go to the Cheshire medical unit where he told staff members he was "suffering from weight loss, uncontrollable thirst, shortness of breath, a 'metallic' breath odor, progressive loss of energy, extreme fatigue, stomach pain, vomiting, headaches, blurred vision and the need to frequently urinate." [Para. 43.] Plaintiff was seen later in the day by Dr. Steven Stein, although Stein did not physically examine plaintiff or order any screening tests at that time. [Para. 44.] Stein wrote in plaintiff's medical file that plaintiff had "multiple minor complaints

unassociated." [Id.] After leaving the medical unit on June 2, plaintiff filed a medical grievance emergency form, requesting appropriate medical attention. [Para. 45.] Plaintiff has never received a response to this form. [Para. 46.]

Plaintiff continued to experience the same symptoms on June 3 and June 4, 1995. [Para. 47,49.] In addition to these symptoms, on June 4 he started spitting up blood. [Para. 49.] On both days, plaintiff reported his symptoms to DOC staff and requested medical attention. [Paras. 47, 49.] Plaintiff did not receive medical care on either day. [Paras. 48, 50.]

Plaintiff was seen again in the medical unit around 2:00 A.M. on June 5, 1995, complaining of the same symptoms. [Para. 52.] Plaintiff did not see a doctor during this visit and did not undergo any screening tests. [Para. 53.] In the afternoon of June 5 and after plaintiff returned to his cell, he again requested medical attention after he began experiencing chest pains. [Para. 54.] Plaintiff returned to the medical unit that afternoon, where a nurse gave him antacids and Maalox for his stomach pains before he returned to his cell. [Paras. 55-56.]

On June 6, 1995, at approximately 1:00 A.M., correctional officers summoned a nurse to plaintiff’s cell because plaintiff was too weak to sit, stand, or go to the medical unit. [Para. 57.] Plaintiff was not examined by a doctor, scheduled for screening tests, or taken back to the medical unit at that time. [Para. 56.] At approximately 4:00 A.M., a nurse placed a follow

up call to plaintiff's cellblock to check on his status. [Para. 57.] A corrections officer called the medical unit at approximately 8:15 A.M. on June 6 to request wheelchair transport for plaintiff to the medical unit, as plaintiff was unable to sit or stand on his own. At approximately 9:00 A.M., plaintiff was taken to the medical unit where he was seen by Dr. Stein. [Paras. 59-60.] Dr. Stein ordered initial medical screening tests, including blood and urine analyses. [Para. 61.] The blood and urine tests evaluated in the medical unit indicated that plaintiff had elevated levels of glucose, ketones and blood sugar. [Paras. 63-64.] Dr. Stein did not take further action on June 6 to treat plaintiff. [Para. 65.]

Plaintiff requested and was seen by Dr. Swaney, another doctor at Cheshire, on June 6. [Para. 66.] After examining the plaintiff, Dr. Swaney ordered plaintiff be immediately transferred to a hospital for treatment of diabetic acidosis. [Paras. 66-67.] Plaintiff was not immediately transported to the hospital, and was instead placed into a pre-test HIV counseling session lasting twenty minutes, and then left in front of the nurses' station for over an hour. [Paras. 70-71.] During this period, plaintiff drifted in and out of consciousness, was unable to hold his head up and was barely able to speak. [Para. 71.]

Later that same day, plaintiff was admitted to the intensive care unit at St. Mary's Hospital in Waterbury, Connecticut. [Para. 29.] Plaintiff remained in the intensive care unit for

three days and was released from the hospital on June 14, 1995. [Para. 29.] While in the hospital, plaintiff was diagnosed with "severe diabetic ketoacidosis/insulin dependent diabetes mellitus." [Para. 29.]

On or about June 7, 1995, laboratory results from the June 6 tests were placed into plaintiff's DOC medical file, showing that he tested positive for the hepatitis C virus ("HCV"). [Para. 31.] Defendants never advised plaintiff that he has HCV, nor have they provided him any treatment for HCV. [Para. 32.] Between June 7, 1995 and March 6, 2000, defendants did not attempt to monitor plaintiff's HCV. [Para. 32.] Plaintiff again tested positive for HCV on January 19, 2000, but received no information on the diagnosis or HCV treatment. [Para. 88.]

On multiple occasions in 1995, 1996, and 1997, plaintiff reported to the medical unit to receive his daily insulin injections and was given improper doses of insulin which posed a serious risk to plaintiff's health. [Paras. 81-83.] On two occasions in 1997, plaintiff was injected with insulin prescriptions for other inmates, resulting in a too large dosage of insulin. [Para. 84.]

On June 5, 1999, plaintiff was transferred to the Carl Robinson Correctional Facility in Enfield, Connecticut. [Para. 85.] Results from a medical screening analysis performed that same day indicated that plaintiff was suffering from liver disease. [Para. 86.] Plaintiff was not advised of the test

results and no further testing was ordered. [Para. 86.]

DISCUSSION

Defendants seek judgment on the pleadings on all of plaintiff's claims. In support of their motion, defendants argue that "(1) plaintiff failed to exhaust his administrative remedies; (2) the claims against the State of Connecticut are barred by the Eleventh Amendment; (3) the negligence claims against the individual defendants are barred by C.G.S. §4-165; and (4) the plaintiff has failed to allege any facts which would suggest that Defendant Pelkey had any personal involvement in the events ostensibly giving rise to this action." [Doc. #89, at 1.] These arguments are discussed further below.

1) Failure to Exhaust Administrative Remedies

The defendants contend that the claims against them should be dismissed because plaintiff failed to exhaust his administrative remedies. Plaintiff responds by making four arguments: (1) plaintiff has exhausted the administrative remedies; (2) that § 1997(e) as amended by the Prison Litigation Reform Act ("PLRA") is not applicable because plaintiff's injuries and the filing of his complaint pre-date the enactment of the statute; (3) even if the court chose to apply the requirements of the PLRA, plaintiff complied with the

requirements to the extent possible; and (4) that deliberate indifference to medical needs claims are not subject to the PLRA exhaustion requirements because they are not prison conditions.

The Prison Litigation Reform Act, signed into law April 26, 1996, requires an inmate to exhaust his administrative remedies before bringing a § 1983 action with respect to prison conditions. See 42 U.S.C. § 1997e(a). The term "action . . . with respect to prison conditions" is not defined in § 1997e. The term is defined, however, in another portion of the Prison Litigation Reform Act of 1996, Pub. L. 104-140, 110 Stat. 1327, which is codified at 18 U.S.C. § 3626(g)(2). There the term is defined to be "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings . . . ." Other courts have determined that this definition "is the best indication of what Congress intended when it used the term 'action . . . with respect to prison conditions' in § 1997e(a)." Moore v. Smith, 18 F. Supp. 2d 1360, 1363 (N.D. Ga. 1998). See Cruz v. Jordan, 80 F. Supp. 2d 109, 116 (S.D.N.Y. 1999) (citing cases).

Here, the plaintiff filed this action on February 22, 1996, two months before the PLRA was signed into law. The Second Circuit and other courts have held that the requirement of exhaustion of administrative remedies set forth in 42 U.S.C.

§ 1997e(a) cannot be applied retroactively to a case pending at the time the PLRA was enacted. See Salahuddin v. Mead, 174 F.3d 271, 275-76 (2d Cir. 1999); Bishop v. Lewis, 155 F.3d 1094, 1095 (9th Cir. 1998); Wright v. Morris, 111 F.3d 414, 418 (6th Cir.), cert. denied, 522 U.S. 906, 118 S. Ct. 263 (1997); Bolton v. Goord, 992 F. Supp. 604, 624-25 (S.D.N.Y. 1998); Proctor v. Vadlamudi, 992 F. Supp. 156, 158 (N.D.N.Y. 1998); Cunningham v. Eyman, 11 F. Supp. 2d 969, 975-76 (N.D. Ill. E.D. 1998). Because this action was pending prior to the enactment of the exhaustion requirement in the PLRA, the court will not apply § 1997e(a) retroactively to the plaintiff's claims. Accordingly, the defendants' motion is denied on this ground and the court need not address the plaintiff's remaining arguments on this claim.

2) Claims Against the State of Connecticut DOC

Defendants argue that the State of Connecticut should be dismissed from the case as the Eleventh Amendment bars any claims for relief plaintiff is seeking from it.[1] Plaintiff responds that "claims against a state seeking an injunction for improper medical treatment are not barred by the Eleventh Amendment."

[1] The Court construes defendants to be referring to the State of Connecticut Department of Corrections when discussing the "State of Connecticut" in its motion. The court has found no evidence that the plaintiff is attempting to sue the State independent of the Department of Corrections. See Second Amended Complaint, at 3.

[Doc. # 90, at 18.]

The Eleventh Amendment states that "[t]he Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The Supreme Court has interpreted this provision to bar suits against a state brought by its own citizens. See e.g., Edelman v. Jordan, 415 U.S. 651, 662-63, 94 S. Ct. 1347, 1355 (1974); Employees v. Department of Public Health & Welfare, 411 U.S. 279, 280, 93 S. Ct. 1614, 1615-16 (1973). "Although Congress is empowered under section five of the Fourteenth Amendment to override Eleventh Amendment immunity and 'to enforce 'by appropriate legislation' the substantive provisions of the Fourteenth Amendment, which themselves embody significant limitations on state authority,' . . . it is well settled that 42 U.S.C. § 1983 does not constitute an exercise of that authority." Dube v. State Univ. of New York, 900 F.2d 587, 594 (2d Cir. 1990) (citations omitted). This principle applies equally to state agencies or departments, regardless of whether the relief sought is legal or equitable. See Dube, 900 F.2d at 594, quoting Pennhurst State School and Hosp. v. Halderman, 465 U.S. 89, 100, 104 S. Ct. 900, 907 (1984); Papasan v. Allain, 478 U.S. 265, 276, 106 S. Ct. 2932, 2939 (1986).

Here, plaintiff names the State of Connecticut Department of Corrections as a defendant. It is well-settled that a state

agency is not a "person" within the meaning of § 1983. See Will v. Michigan Dep't State Police, 491 U.S. 58, 109 S. Ct. 2304 (1989); Fisher v. Cahill, 474 F.2d 991, 992 (3d Cir. 1973) (state prison department cannot be sued under § 1983 because it does not fit the definition of "person" under § 1983); Ferguson v. Morgan, 1991 WL 115759, at *1 (S.D.N.Y. June 20, 1991), No. 90 Civ. 6318 (JSM) (Otisville Correctional Facility medical staff not a person under § 1983); Grabow v. Southern State Correctional Facility, 726 F. Supp. 537, 538-39 (D.N.J. 1989) (Department of Corrections not a person under § 1983); Sittig v. Illinois Dep't of Corrections, 617 F. Supp. 1043, 1044 (N.D. Ill. 1985) (Illinois Department of Corrections not a person under § 1983); Allah v. Commissioner of Dep't of Correctional Services, 448 F. Supp. 1123, 1125 (N.D.N.Y. 1978) (New York Department of Correctional Services not a person under § 1983).

Plaintiff makes no argument that the State has waived its sovereign immunity or consented to this court's jurisdiction in the matter at hand. Thus, plaintiff's claims against the State of Connecticut Department of Corrections lack an arguable legal basis and must be dismissed.

3) Negligence Claims Against the Individual Defendants

Defendants argue that plaintiff's third claim should be dismissed as it alleges that the individual defendants were

negligent in performing their job duties.[2] Defendants argue that Connecticut General Statute § 4-165 provides immunity to the individual defendants from negligence claims. The statute states, "[n]o state employee shall be personally liable for damage or injury, not wanton, reckless or malicious, caused in the discharge of his duties or within the scope of his employment." CONN. GEN. STAT. § 4-165.

Plaintiff responds that § 4-165 cannot provide immunity for state employees who allegedly violate federal law. Plaintiff also argues that the claims alleged in the complaint are based on reckless or deliberately indifferent conduct rather than negligence.

The court agrees with plaintiff to the extent that state law cannot shield state employees from liability for violations of federal law. See Schiff v. Kerrigan, 625 F. Supp. 704, 707 n.7 (D. Conn. 1986), citing Scheuer v. Rhodes, 416 U.S. 232, 237, 94 S. Ct. 1683, 1687 (1974). However, in order to state a cognizable Eighth Amendment claim under § 1983, allegations that defendants acted negligently are insufficient as a matter of law. See Hudson v. Greiner, 2000 WL 1838324, *6 (S.D.N.Y. Dec. 13,

[2] It is somewhat unclear whether defendants are challenging plaintiff's second or third claims for relief. To the extent that defendants are challenging plaintiff's second claim for relief, the Court finds that the second claim states a cause of action for intentional infliction of emotional distress, thus rendering the applicability of Connecticut General Statute § 4-165 moot.

2000), quoting Hayes v. New York City Dep't of Corrections, 84 F.3d 614, 620 (2d Cir. 1996); McCloud v. Delaney, 677 F. Supp. 230, 232 (S.D.N.Y. 1988). Thus, to the extent plaintiff's response to the applicability of Connecticut General Statute § 4-165 to this case is based on a potential cause of action under § 1983, allegations of negligent conduct are insufficient.

Plaintiff also responds to defendants' motion by arguing that the third claim for relief alleges that defendants acted recklessly in prolonging plaintiff's pain and suffering. The court agrees that the third claim for relief in part alleges reckless conduct. However, the court is unable to find a separate cause of action alleged in the third claim which would not be encompassed by the Eighth Amendment claim. The court notes that, to some extent, reckless conduct is included in the culpability requirement for an Eighth Amendment deliberate indifference to serious medical needs claim. See Word v. Croce, 2001 WL 434613, *4 (S.D.N.Y. Apr. 27, 2001), citing Hathaway v. Coughlin, 99 F.3d 550, 553 (2d Cir. 1996) (subjective component of deliberate indifference met by "showing defendants acted with a state of mind akin to criminal recklessness - that the defendants knew of and disregarded a grave risk to the prisoner's health or safety"); Hudson v. Greiner, 2000 WL 1838324, *6 (S.D.N.Y. Dec. 13, 2001); Koehl v. Rowe, 1997 WL 724647, *5 (E.D.N.Y. Nov. 14, 1997). To the extent that plaintiff claims a cause of action based upon reckless conduct, the Court finds that

this claim is encompassed in plaintiff's Eighth Amendment claim. Plaintiff has also failed to provide any case law indicating an independent cause of action for reckless conduct that would be applicable to this case.[3]

Finally, plaintiff may be characterizing the third claim for relief as stating a cause of action for detrimental reliance. [Doc. # 90, at 20.] However, plaintiff did not cite, and the court has been unable to find, any cases establishing a cognizable cause of action for detrimental reliance in the context of the provision of medical care to prisoners by Department of Corrections' employees.

For the reasons discussed above, defendants' motion is GRANTED, to the extent that plaintiff's third claim for relief is DISMISSED for failure to state a cause of action.

4) Claim Against Defendant Pelkey

Defendants argue that plaintiff has failed to allege any facts that would demonstrate Warden Pelkey had any personal involvement in the actions underlying plaintiff's claims. Plaintiff responds that a suit for injunctive relief may be maintained against a defendant sued in his official capacity if

[3] The court also notes that the civil rights statute was not meant to redress medical malpractice claims that could be adequately addressed under state law. See Hathaway v. Coughlin, 37 F.3d. 63, 68 (2d Cir. 1994) ("mere medical malpractice does not constitute an Eighth Amendment violation"); Tomarkin v. Ward, 534 F. Supp. 1224, 1230-31 (S.D.N.Y. 1982).

the "complaint alleges that the official had ‘responsibility to ensure that prisoners’ basic needs were met, and the complaint adequately alleged deliberate indifference to a serious medical need.’" Doc. # 90, at 23, quoting Koehl v. Dalsheim, 85 F.3d 86, 89 (2d Cir. 1996). In the alternative, plaintiff responds that sufficient allegations of Pelkey’s personal involvement are pled in the complaint.

In this case, Pelkey is sued in his official capacity. [Doc. # 82, para. 6.] To the extent that plaintiff seeks damages from Pelkey, those claims are barred by the Eleventh Amendment. However, plaintiff also seeks injunctive relief against Pelkey and the other defendants. "Injunctive relief may be obtained in a § 1983 action for deliberate indifference to a serious medical need, even absent an official’s personal involvement, if the complaint alleges that the official had ‘responsibility to ensure that prisoners’ basic needs were met, and the complaint adequately alleged deliberate indifference to a serious medical need.’" White v. Mitchell, 2001 WL 64756, *3 (E.D.N.Y. Jan. 18, 2001), quoting Koehl v. Dalsheim, 85 F.3d 86, 89 (2d Cir. 1996); see also Davidson v. Scully, 2001 WL 533719, *4 (S.D.N.Y. May 18, 2001) (collecting cases). Here, plaintiff has adequately alleged deliberate indifference to a serious medical need and that Pelkey was responsible for ensuring the "provision of medical care." [Doc. # 82, para. 6.] Thus, defendants’ motion seeking to have Pelkey dismissed is DENIED.

CONCLUSION

Defendants' Motion for Judgment on the Pleadings is GRANTED in part and DENIED in part. Defendants' motion is granted to the extent that the State of Connecticut Department of Corrections is dismissed as a defendant and plaintiff's third claim for relief is dismissed.

SO ORDERED at Bridgeport this _____ day of July, 2001.

_____
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE