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

ANTONIO BUNDY,	:	**No. 3:02cv1245**
Plaintiff	:	
	:	**(Judge Munley)**
v.	:	
	:	
WEXFORD HEALTH SERVICES, INC;	:	
ERIC HOFFMAN; GEORGE WEAVER;	:	
K. ALLEN; H. ZIMMERMAN; BEN VARNER;	:	
LISA G. HOLLIBAUGH,	:	
Defendants	:	

MEMORANDUM

Before the court for disposition is Magistrate Judge Thomas M. Blewitt's report and recommendation that recommends granting summary judgment in favor of the defendants. The plaintiff has filed objections to the report and recommendation. For the reasons that follow, the report and recommendation will be adopted.

Background

The plaintiff is Antonio Bundy, who at the relevant time was imprisoned at the State Correctional Institution at Smithfield, Pennsylvania (hereinafter "SCI-Smithfield"). Plaintiff filed the Amended Complaint at issue on August 26, 2002. He claims that while incarcerated at SCI-Smithfield he was denied medical treatment with regard to a vision problem and a skin condition on his hands and genital area.

A motion to dismiss was filed by Defendant Wexford Health Services, Inc., the health care provider contracted by the Pennsylvania Department of Corrections to provide health

care at SCI-Smithfield; and Eric Hoffman, a physician's assistant at SCI-Smithfield (referred to collectively as the "Wexford Defendants"), and a motion to dismiss was also filed by Defendants Weaver, Allen, Zimmerman, Varner and Hollibaugh (referred to collectively as the "Corrections Defendants"). We granted the motion to dismiss with respect to the Corrections Defendants. The motion to filed by the Wexford Defendants was granted in part and denied in part so that the sole remaining claim is an Eighth Amendment claim against Wexford Health Services, Inc., and Defendant Hoffman.

After the close of discovery, both the plaintiff and the defendants filed motions for summary judgment, which the magistrate recommends granting in favor of the defendants. The plaintiff has filed objections, bringing the case to its present posture.

Standard of review

In disposing of objections to a magistrate's report and recommendation, the district court must make a *de novo* determination of those portions of the report to which objections are made. 28 U.S.C. § 636 (b)(1)(C); see also Henderson v. Carlson, 812 F.2d 874, 877 (3d Cir. 1987). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions. Id.

The report and recommendation involves the parties' cross-motions for summary judgment. Granting summary judgment is proper 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 judgment as a matter of law. See Knabe v. Boury, 114 F.3d 407, 410 n.4 (3d Cir. 1997) (citing FED. R. CIV. P. 56(c)). "[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

In considering a motion for summary judgment, the court must examine the facts in the light most favorable to the party opposing the motion. International Raw Materials, Ltd. v. Stauffer Chemical Co., 898 F.2d 946, 949 (3d Cir. 1990). The burden is on the moving party to demonstrate that the evidence is such that a reasonable jury could not return a verdict for the non-moving party. Anderson, 477 U.S. at 248 (1986). A fact is material when it might affect the outcome of the suit under the governing law. Id.

Discussion

Plaintiff's claim is brought pursuant to 42 U.S.C. § 1983. In pertinent part, Section 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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.

Thus, to establish a claim under section 1983, two criteria must be met. First, the conduct complained of must have been committed by a person acting under color of state law. Second, the conduct must deprive the complainant of rights secured under the Constitution or federal law. Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 590 (3d Cir. 1998).

In the instant case, there is no question that the defendants are state actors, and the plaintiff claims that his Eighth Amendment right to be free from cruel and unusual punishment has been violated due to the lack of medical treatment in prison.[1] The United States Supreme Court has concluded that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain, which is prohibited by the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). The Third Circuit Court of Appeals has explained the relevant law as follows:

> We have on several occasions discussed the conditions under which deprivation of medical treatment violates a prisoner's Eighth Amendment right not to be subjected to cruel and unusual punishment. "Only 'unnecessary and wanton infliction of pain' or 'deliberate indifference to the serious medical needs' of prisoners are sufficiently egregious to rise to the level of a constitutional violation." White v. Napoleon, 897 F.2d 103, 108-09 (3d Cir.1990) (quoting Estelle v. Gamble, 429 U.S. 97, 103, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976))). Allegations of medical malpractice are not sufficient to establish a Constitutional violation. See id. (citing Estelle, 429

[1]The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, **nor cruel and unusual punishment inflicted**." (emphasis added).

> U.S. at 106, 97 S.Ct. 285); Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir.1987) (MCCII) (citing Estelle, 429 U.S. at 106 & n. 14, 97 S.Ct. 285; Gittlemacker v. Prasse, 428 F.2d 1, 6 (3d Cir.1970)); see also Daniels v. Williams, 474 U.S. 327, 332-34, 106 S.Ct. 662, 88 L.Ed.2d 662 (holding that negligence is not compensable as a Constitutional deprivation). "[M]ere disagreement as to the proper medical treatment" is also insufficient. MCCII, 834 F.2d at 346 (citing Bowring v. Godwin, 551 F.2d 44, 48 (4th Cir.1977); Massey v. Hutto, 545 F.2d 45, 46 (8th Cir.1976) (per curiam)).
>
> As we explained in White, the Estelle "deliberate indifference to serious medical needs" standard is clearly met when a doctor is "intentionally inflicting pain on [a] prisoner[ ]." 897 F.2d at 109. In MCCII, we identified several other scenarios that satisfy Estelle. Most relevant to this case are (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,' " MCCII, 834 F.2d at 346 (quoting Westlake v. Lucas, 537 F.2d 857, 860 (6th Cir.1976)), and (2) "where 'knowledge of the need for medical care [is accompanied by the] ... intentional refusal to provide that care,' " id. (quoting Ancata v. Prison Health Servs., 769 F.2d 700, 704 (11th Cir.1985)) (alterations in original).
>
> The Estelle standard " 'requires deliberate indifference on the part of the prison officials and it requires the prisoner's medical needs to be serious.' " Id. (quoting West v. Keve, 571 F.2d 158, 161 (3d Cir.1978)).

Spruill v. Gillis, 372 F.3d 218, 235-36 (3d Cir. 2004).

The magistrate suggest that summary judgment is appropriate in favor of the defendants because there is no genuine issue of fact with regard to: 1) whether the prisoner's medical needs were serious and 2) whether deliberate indifference was exhibited by the prison officials. We shall address each issue separately.

I. Serious medical needs

As set forth above, a prisoner must suffer from serious medical needs to meet the second prong of the Eighth Amendment test. The law provides that a medical need is "serious," if it is one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention. Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (internal quotation marks and citation omitted). The effect of denying a particular treatment may also establish the seriousness of an inmates medical need. Id. If a denial or delay in treatment causes "unnecessary and wanton infliction of pain," life-long handicap or permanent loss, the medical need is considered serious. Id.

Plaintiff asserts that he experienced pain and suffering due to a failure to receive proper medication. He has further alleged skin disfigurement and permanent eye damage as a result of the defendants' refusal to provide medication and treatment. After a careful review, we find that the record reveals that the plaintiff did not suffer from a constitutionally serious medical need.

The defendants have presented relevant portions of the plaintiff's medical records and several declarations, which establish that the plaintiff did not suffer from a serious medical need. See Def. Ex. A, The declaration of Ronald Long, M.D., the medical director at SCI-Smithfield, ¶ 12 (No acute and/or emergent conditions were noted during examination of the plaintiff); Def. Ex. B, ¶ 14(plaintiff never complained of any serious, acute and/or emergent

medical condition.); Def. Ex. C, plaintiff's medical records. Plaintiff has submitted no evidence to establish that he did indeed suffer from a serious medical need.

Thus, there is no evidence from which a reasonable jury could conclude that plaintiff suffered from a serious medical need. This is especially true in light of the evidence that upon his transfer to SCI-Smithfield, the plaintiff denied having any current acute or chronic conditions or problems. He also denied that he was on any medications. See, Ex. C, Page 1, Inter-Institutional Transfer Reception Screening Form. The form further indicates that the plaintiff had eyeglasses that were "in property." Id. Plaintiff admits that he did not complain about his groin area at the time of this transfer. (Def. Ex. D, at 41). Moreover, even if there were evidence of a serious medical need, the plaintiff's claim would still fail because the record reveals that the defendants did not engage in deliberate indifference.

II. Deliberate Indifference

The government has an "obligation to provide medical care for those whom it is punishing by incarceration." Estelle v. Gamble, 429 U.S. 97, 103 (1976). Pursuant to Estelle, an inmate plaintiff must demonstrate that prison officials have breached the standard of medical treatment to which he was entitled in order to state a cognizable Eighth Amendment claim. A later decision by the Supreme Court addressed the issue of what standard should be applied in determining deliberate indifference in Eighth Amendment cases. The Court established that the proper analysis is whether a prison official "acted or failed to act despite his knowledge of a substantial risk of serious harm." Farmer v.

Brennan, 511 U.S. 825, 841 (1994). Furthermore, a complaint that a physician or a medical department "has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment [as] medical malpractice does not become a constitutional violation merely because the victim is a prisoner." Estelle, 429 U.S. at 106.

Where a prisoner has actually been provided with medical treatment, as in the instant case, it cannot always be concluded that, if such treatment was inadequate, it was no more than mere negligence. Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993). It is true that if inadequate treatment results simply from an error in medical judgment, there is no constitutional violation. Id. Where a failure or delay in providing prescribed treatment is deliberate and motivated by non-medical factors, a constitutional claim may be presented. Id.

A review of the plaintiff's medical records demonstrates that deliberate indifference has not been established. The record demonstrates that the plaintiff *was* treated for the conditions of which he complained. As stated above, plaintiff was transferred to SCI-Smithfield on June 12, 2001. On June 21, 2001, Defendant Hoffman treated him for dry skin on his hands and issued an order that allowed plaintiff to purchase Vaseline to apply to his hands for sixty (60) days. (Def. Ex. B, p. 2, ¶ 7, Def. Ex. C, p. 14). Plaintiff was again evaluated on June 21, 2001, and Defendant Hoffman indicates that he did not complain about any rash to his genital area or his vision. (Def. Ex. B, p. 2, ¶ 8, Def. Ex. C, p. 14). On

June 25, 2001, Defendant Hoffman once again examined plaintiff. He ordered a topical cream for plaintiff to use on his hands for twenty-one days. Again, plaintiff did not complain about any rash to his genital area or his vision. (Def. Ex. B, p. 3, ¶ 10, Def. Ex. C, p. 13).

The next time Defendant Hoffman saw the plaintiff was on August 2, 2001 for plaintiff's annual physical examination. The medical records indicate that at this physical, plaintiff refused to submit to an examination of, *inter alia*, his genitalia. (Def. Ex. C, p. 3 -5, 8). Plaintiff, in fact, signed a release form indicating that he refused such an examination. Id. at 7 - 8.[2] At his deposition, plaintiff admitted that at his August 2, 2001 physical examination he made no complaint of any recurrent rash or problems with his scrotum. (Def. Ex. D, at 61). After this physical, Defendant Hoffman had no further involvement in the medical care of the plaintiff. (Def. Ex. B, p. 4, ¶ 13, & Def. Ex. C).

Dr. Long met with the plaintiff on August 4, 2001, and discussed plaintiff's refusal to be examined.[3] He explained to the plaintiff that "by refusing the tests, medical conditions may go undetected and lead to medical consequences." (Def. Ex. A, p. 3, ¶ 11).

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[2]Plaintiff asserts that his signature was forged on the release form. No evidence of such a forgery has been presented by the plaintiff. An examination of the signature on the release and the signature on plaintiff's brief demonstrates that the signatures appear identical.

[3]Plaintiff asserts that Dr. Long is a liar and a forger. As evidence of his assertions plaintiff refers the court to Dr. Long's Declaration wherein he says that he met with the plaintiff on August 4, 2001. Plaintiff submits the visitor log of the RHU to establish that Dr. Long did not meet with him on that day. The court is unconvinced that this evidence establishes that Long is a liar and forger. In his Declaration Dr. Long does not say that he met with the plaintiff in the RHU.

This evidence establishes, therefore, that the defendants did not refuse to treat the plaintiff for his hands and that his genital area went unexamined and untreated solely due to plaintiff's own desire not to be examined. (Def. Ex. C, p. 21). The treatment that was provided for plaintiff's hands may have been negligent, however, inadequate treatment due to error in medical judgment or negligence does not rise to the level of a constitutional violation. Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993).

The final issue that the plaintiff complains of is his eyeglasses. Once again his claim is baseless. In his deposition, he admits that he may have had his eyeglasses by August 2, 2001, the final time he saw Defendant Hoffman. (Def. Ex. D, p. 62). On December 3, 2001, plaintiff was treated by a prison contracted optometrist and was provided with a prescription for new eyeglasses. No acute or emergent eye condition was noted during the exam. (Def. Ex. A, p. 4, ¶ 12; Ex. C, p. 10). Plaintiff has submitted no evidence to establish that he was refused the eyeglasses prescribed by this optometrist.

Accordingly, based upon the above evidence, and the lack of any evidence to the contrary from the plaintiff, we find that a reasonable jury could not conclude that the defendants were deliberately indifferent to the plaintiff's medical needs. Summary judgment will hence be granted to the defendants and denied to the plaintiff. An appropriate order follows.

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WEXFORD HEALTH SERVICES, INC;	:	
ERIC HOFFMAN; GEORGE WEAVER;	:	
K. ALLEN; H. ZIMMERMAN; BEN VARNER;	:	
LISA G. HOLLIBAUGH,	:	
Defendants	:	

ORDER

AND NOW, to wit, this 30 day of July 2004, it is hereby **ORDERED** as follows:

1) The plaintiff's objections to the magistrate's report and recommendation (Doc. 107) are **OVERRULED**, and the magistrate's report and recommendation (Doc. 106) is **ADOPTED**;

2) The defendants' motion for summary judgment (Doc. 76) is **GRANTED** and the plaintiff's motion for summary judgment (Doc. 83) is **DENIED**;

3) The Clerk of Court is directed to close this case.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court