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UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT M. LATTIMORE, JR.,

Plaintiff

vs.

MARTIN LASKY, M.D., et al.,
Defendants

:
:
: No. 4:CV-01-0124
:
:
: (Judge Jones)

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG, PA
DEC 2 2002
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MEMORANDUM

Background

Plaintiff, an inmate formerly confined at the State Correctional Institution, Camp Hill, Pennsylvania¹, ("SCI-Camp-Hill"), filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging that defendants were deliberately indifferent to his serious medical condition. Plaintiff's in forma pauperis application was previously construed as a motion to proceed without full prepayment of fees and costs and granted. By Order dated August 12, 2002, this matter was reassigned to the undersigned.

Lattimore names as defendants the following individuals: Martin Lasky, a physician at SCI-Camp Hill; Martin Dragovich, Superintendent at SCI-Camp Hill;

1. By letter to the court filed October 31, 2002, plaintiff notified the court that his present address is 2012 N. 4th Street, Harrisburg, Pa 17104. (Doc. No. 83).

Teresa Law, Health Care Administrator at SCI-Camp Hill; and Keith Weigle, an employee of Wexford Health Services, Inc².

The plaintiff states that he has been confined at SCI-Camp Hill since February 9, 2000. During this time period plaintiff was receiving chemo-therapy treatment for Hodgkin's Disease. He claims that "on or about June 6, 2000, he requested to stop his treatment due to serious personal as well as family problems". (Doc. No. 1, complaint).

On July 15, 2000, the plaintiff met with Dr. Lasky and requested to finish chemo-therapy treatment. On August 9, 2000, plaintiff was to be seen by Dr. Scott, Barnes, the oncologist who had been treating him. He was instead examined by Dr. Jennifer Cadiz. Dr. Cadiz performed a physical examination on plaintiff and informed him that everything was fine, "but that it was imperative that [he] have all of his following treatments as scheduled". Plaintiff received chemo-therapy on this visit and treatments were scheduled for every two weeks thereafter. Id.

Lattimore claims that for a seven week period, from August 9, 2000 until September 26, 2000, he did not receive any type of treatment for his cancer. He

2. Since September, 1996, Wexford Health Sources, Inc., has been the contracted medical provider at SCI-Camp Hill, to provide medical services to inmates of the facility, including utilization review and case management.

states that on September 12, 2000, he “spoke to Nurse Melissa, who called someone and then informed plaintiff that he would be going out for treatment by the end of that week”. Id. On September 18, 2000, plaintiff wrote to Teresa Law, Health Care Administrator, explaining that he was “suffering from cancer and was not receiving his prescribed chemo-therapy treatments and was very concerned that [his] condition was worsening.” Plaintiff claims to have not received “any type of reply”. Id.

On September 22, 2000, plaintiff “informed Mr. Ward, Unit Manager of B-Block, of the situation as well as the steps plaintiff had already taken to get help”. Mr. Ward stated that he had “no control over medical and supplied plaintiff with a grievance form”. Id. On September 25, 2000, plaintiff filed a grievance against the medical department, inquiring as to the reason for the delay of treatment.

On September 26, 2000, plaintiff was seen by Dr. Barnes. Plaintiff asked Dr. Barnes about the delay in his treatment. Plaintiff claims that Dr. Barnes stated that he had “personally called Dr. Lasky at SCI-Camp Hill about plaintiff not coming for treatment” and that “Dr. Lasky informed him that the reason plaintiff was not coming for treatment was because plaintiff was no longer an inmate at SCI-Camp Hill.” Id. Dr. Barnes then conducted a physical examination of the plaintiff which “revealed suspicious lumps under plaintiff’s skin on the left side of the neck and in the left

underarm pit". Dr. Barnes "immediately stopped chemo-therapy and ordered a CAT scan of plaintiff's neck and chest." He also "showed plaintiff a letter from Dr. Jennifer Cadiz which was sent to SCI-Camp Hill, stating that plaintiff was to be returned for further treatment two (2) weeks after previous chemo-therapy on or about 8-9-00". Id.

On October 6, 2000, plaintiff was called to the medical department to speak with Dr. Lasky concerning plaintiff's grievance. Dr. Lasky allegedly stated that plaintiff's grievance "was bullshit and that the plaintiff was not the only sick, prisoner at SCI-Camp Hill." Id. He could not "give plaintiff any reasonable purpose for the delay/interference of plaintiff's prescribed treatment". Id.

On October 10, 2000, plaintiff returned to Dr. Barnes' office for the result of the CAT scan. The scan confirmed that there were some lumps in plaintiff's neck and chest. Dr. Barnes ordered a biopsy of these lumps. Id.

On October 13, 2000, plaintiff received an answer from Dr. Lasky in reference to plaintiff's grievance. Plaintiff states that "Dr. Lasky's answer was what happened on or about 6-6-00 (plaintiff requested to stop treatments) but offered no reason for the approx. 7 week delay/interference of plaintiff's treatment, which is what plaintiff was grievancing (sic)". Id.

On October 16, plaintiff filed an appeal to Superintendent Dragovich, informing him that he was "suffering from cancer and was not receiving treatment for approx. 7 weeks and was very concerned." Lattimore "also informed Superintendent Dragovich of the steps and numerous ways plaintiff had tried to rectify the situation, as well as that Dr. Lasky's answer to plaintiff's grievance was incorrect as to the dates of plaintiff's treatment and did not given any reason for the delay/interference of plaintiff's treatment". Id.

On October 20, 2000, plaintiff received an answer to his grievance from Superintendent Dragovich, in which he claims that Dragovich "upheld Dr. Lasky's answer and used that to base his answer". He offered no other reason for the delay in plaintiff's treatment.

On October 26, 2000, plaintiff filed a final appeal with the Chief Hearing Examiner. On November 23, 2000, plaintiff's appeal was denied. Id.

As of January 11, 2001, plaintiff claims that he had not received the "prescribed test to determine the exact nature of the lumps on plaintiff's neck and under arm". He states that he was seen twice by a radiologist in December, who "informed plaintiff that he believes plaintiff's condition has worsened due to the delay/interference in plaintiff's treatment".

On January 19, 2001, Lattimore filed the instant action in which he claims that defendant Weigle's failure to "schedule plaintiff's treatments as prescribed, caused the plaintiff unnecessary mental and physical pain and anguish". He further alleges that Superintendent Dragovich is legally responsible for the well being of all the prisoners at SCI-Camp Hill, and that his "failure to fully investigate plaintiff's claims that his subordinates were not fulfilling their duty, allowed plaintiff to continue needless physical and mental pain and anguish". For relief, plaintiff seeks compensatory and punitive damages, as well as injunctive relief.

Presently pending before the court are defendants' motions for summary judgment. (Doc. Nos. 70 & 75). These motions have been fully briefed and are ripe for disposition. In their motion for summary judgment, defendants Lasky and Weigle contend, *inter alia*, that they are entitled to judgment as a matter of law because Lattimore has not exhausted his claim for monetary relief. Because plaintiff's claims against the defendants for monetary relief are foreclosed as a consequence of his failure to seek such relief through the Department of Corrections ("DOC") grievance process, and because all defendants are entitled to judgment as a matter of law, for the reasons discussed below, the motions will be granted.

Discussion

A. Standard of Review

Summary judgment is appropriate when supporting materials, such as affidavits and other documentation, show there are no material issues of fact to be resolved, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The Supreme Court has ruled that Fed. R. Civ. 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The court further stated that "Rule 56 (e). . .requires the non-moving party to go beyond the pleadings and by [his] own affidavits, or by the `depositions, answers to interrogatories, and admissions on file,' designate `specific facts showing that there is a genuine issue for trial.'" Id. at 324. The Supreme Court in Anderson v. Liberty Lobby, 477 U.S. 242 (1986), has held that the opposing party must adduce more than a mere scintilla of evidence in its favor, and cannot simply reassert factually unsupported allegations contained in its pleadings. See Celotex, 477 U.S. at 325. Further, an opposing party cannot defeat summary judgment simply by asserting that a jury might disbelieve an opponent's affidavit. Liberty Lobby, 477 U.S. at 256-57.

Defendants Lasky and Weigle assert that they are entitled to judgment as a matter of law on the ground that Lattimore did not adequately exhaust administrative remedies. Further, all of the moving defendants argue that they are entitled to judgment as a matter of law because the plaintiff has failed to set forth a valid claim of deliberate indifference to a serious medical need.

B. Exhaustion of Administrative Remedies

It is undisputed that Lattimore followed the Department's administrative grievance procedure. (See Doc. No. 78, copies of inmate grievances filed by plaintiff). Defendants Lasky and Weigle, however, argue that Lattimore's complaint must be dismissed because he did not seek monetary compensation through the administrative process.³ In support, they rely upon Geisler v. Hoffman, No. 99-1971

3. 42 U.S.C. § 1997e(a) provides as follows:

No action shall be brought with respect to prison conditions under Section 1979 of the Revised Statutes of the United States (42 U.S.C. § 1983), or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

Section 1997e(a) requires administrative exhaustion "irrespective of the forms of relief sought and offered through administrative avenues." Booth v. Churner, 532 U.S. 731, 741 n.6 (2001). Claims for monetary relief are not excused from the exhaustion requirement. Nyhuis v. Reno, 204 F.3d 65, 74 (3d Cir. 2000). Dismissal of an inmate's claim is appropriate when prisoner has failed to exhaust his available administrative remedies before bringing a civil rights action. Ahmed v. Sromovski,

(3d Cir. Sept. 29, 2000), an unpublished opinion from the Third Circuit.

In Geisler, the United States Court of Appeals for the Third Circuit upheld the dismissal of the complaint of plaintiff, an inmate, against a private physician, Stanley Hoffman, M.D., based on 42 U.S.C. § 1983, solely because of the failure of the plaintiff to exhaust his administrative remedies provided for by DC-ADM 804.⁴ The Court of Appeals concluded that Geisler did not exhaust. "To this end, even if Geisler had brought his grievances before the two appellate tiers provided for by DC-

103 F. Supp. 2d 838, 843 (E.D. Pa. 2000). "[E]xhaustion must occur prior to filing suit, not while the suit is pending." Tribe v. Harvey, 248 F.3d 1152, 2000 WL 167468, *2(6th Cir. 2000)(citing Freeman v. Francis, 196 F.3d 641, 645 (6th Cir. 1999)).

4. With certain exceptions not applicable here, DC-ADM 804, Section VI ("Procedures") provides that, after attempted informal resolution of the problem, a written grievance may be submitted to the Grievance Coordinator; an appeal from the Coordinator's decision may be made in writing to the Facility Manager or Community Corrections Regional Director; and a final written appeal may be presented to the Secretary's Office of Inmate Grievances and Appeals.

Effective May 1, 1998, the Department of Corrections amended DC-ADM 804 to provide that a prisoner, in seeking review through the grievance system, may include requests for "compensation or other legal relief normally available from a court." (DC-ADM 804-4, issued April 29, 1998.) Further, the amendment requires that the [g]rievances must be submitted for initial review to the Facility/Regional grievance Coordinator within fifteen (15) days after the events upon which the claims are based," but allows for extensions of time for good cause, which "will normally be granted if the events complained of would state a claim of a violation of a federal right." Id.

ADM 804, exhaustion in that setting clearly would not have exhausted his current claim for monetary relief, a claim which he never even began to pursue administratively.” Id., slip op. at 4.

This Court, relying upon Geisler, has held that an inmate plaintiff’s failure to seek monetary damages via the prison grievance procedure precludes the prisoner from pursuing such relief under § 1983. See Still v. Pennsylvania Department of Corrections, Civil No. 4:CV-01-2287, slip op. at 11 (M.D. Pa. Sept. 24, 2002 (Jones, J.)). See also, Spann v. Wilson, Civil No. 4:CV-99-1770, slip op. at 14 (M.D. Pa. Sept. 30, 2002 (Kane, J.)) ; Thomas v. Meyers, et al., Civil No. 3:CV-00-1887, slip op. at 15 (M.D. Pa. March 25, 2002(Caputo, J.)); Chimenti v. Kimber, Civil No. 3:CV-01-0273, slip op. at 11 (M.D. Pa. March 15, 2002(Vanaskie, C.J.)); Laird v. Pennsylvania Department of Corrections, Civil No. 3:CV-00-1039, slip op. at 3 (M.D. Pa. Sept. 26, 2001 (Nealon,J.)).

Lattimore did not include a request for monetary damages in his administrative complaint. Thus, plaintiff’s claim against the defendants for monetary relief is foreclosed as a consequence of his failure to seek such relief through the DOC grievance process.

In his brief in opposition, plaintiff attempts to argue that he need not exhaust

“specifically with respect to each item of relief he seeks”, so long as he has substantially complied with the administrative remedy process. (Doc. No. 82, opposition brief at p. 4). Even if the exhaustion requirement had been satisfied as to any of the defendants, however, Lattimore has not presented a viable claim against them.

C. Deliberate Indifference

The fundamental principles of Eighth Amendment analysis reveal that “only ‘the unnecessary and wanton infliction of pain’ constitutes cruel and unusual punishment forbidden by [that Amendment]⁵.” Ingraham v. Wright, 430 U.S. 651, 670 (1977) (citations omitted). Accord Whitley v. Albers, 475 U.S. 312, 319 (1986). Mere negligence or dissatisfaction with medical care does not state a constitutional claim. Estelle v. Gamble, 429 U.S. 97, 105-6 (1976). An Eighth Amendment claim exists only when there is a deliberate indifference to a serious medical need. Id.; West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978).

To establish deliberate indifference, a prison official must both know of and disregard an excessive risk to inmate health or safety. Farmer v. Brennan, 511 U.S. 825, 837 (1994); Wilson v. Seiter, 501 U.S. 294, 299(1991). “[T]he official must

5. The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Farmer, 511 U.S. at 837. “The question ... is whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial ‘risk of serious damage to his future health.’” Id., at 843.

Under Farmer, 511 U.S. at 837, Lattimore must prove that the defendants knew that their conduct presented a substantial risk of harm to him. Where an inmate is provided with medical care and the dispute is over the adequacy of that care, an Eighth Amendment claim does not exist. Nottingham v. Peoria, 709 F.Supp. 542, 547 (M.D.Pa. 1988). Disagreement among individuals as to the proper medical treatment does not support an Eighth Amendment claim. Monmouth County Correctional Inst. Inmates v. Lensario, 834 F.2d 326, 346 (3d Cir. 1987).

It is undisputed that plaintiff received medical care.⁶ Defendants Lasky and

6. Neither Superintendent, Martin L. Dragovich, nor Corrections Health Care Administrator, Teresa M. Law is a physician. The United States Court of Appeals for the Third Circuit in Durmer v. O’Carroll, 991 F.2d 64, 69 (3d Cir. 1993) established that a non-physician defendant cannot be considered deliberately indifferent for failing to respond to an inmate’s medical complaints when he is already receiving treatment by the prison’s medical staff. Likewise, a prison health care administrator “cannot be deliberately indifferent when an inmate is receiving care from a doctor. Thomas v. Zinkel, 155 F. Supp. 2d 408, 413 (E.D. Pa. 2001).

Weigle⁷ have submitted a statement of material facts, (Doc. No. 76) supported by extensive documentation and Dr. Lasky's own affidavit, (Doc. No. 78), which indicate that on or about February 9, 2000, plaintiff was incarcerated at SCI-Camp Hill. During a previous incarceration at Dauphin County prison, Lattimore was diagnosed with Hodgkin's disease. Dr. Al-Mondhiry, his treating oncologist in April 1999, prescribed six full cycles of chemotherapy, which would consist of twelve biweekly treatments. (Doc. No. 78, Exhibit A, Declaration of Martin Lasky, D.O., ¶ 11). Following his discharge from Dauphin County Prison, Lattimore received chemotherapy on August 16, 1999, October 25, 1999 and January 27, 2000, at Hershey Medical Center, but he missed several other appointments for his chemotherapy. *Id.* at ¶ 12.

Following his commitment to SCI-Camp Hill, plaintiff was referred to Hematology and Medical Oncology Associates, P.C. for chemotherapy treatments on February 25, 2000, April 3, 2000, April 28, 2000 and May 19, 2000. *Id.* at 13.

On April 4, 2000, a CT Scan of the chest was performed because there was no

7. Defendant, Keith Weigle is responsible for scheduling plaintiff's trips for medical treatment by outside facilities and/or providers. Plaintiff acknowledges that he has had no discussions with Keith Weigle and admits that he never made any requests for treatment which were refused by Keith Weigle. (See Doc. No. 78, Exhibit E, plaintiff's deposition).

recent CT Scan available. Id. at ¶ 14.

On June 6, 2000, plaintiff was scheduled to receive chemotherapy treatment from Dr. Cádiz at Hematology and Medical Oncology Associates, P.C. Plaintiff advised Dr. Cadiz, however, that he did not want anymore chemotherapy, including the treatment which was scheduled for that day. He expressed a concern to Dr. Cadiz that his treatment plan called for additional chemotherapy cycles beyond what he was initially prescribed by the first oncologist. Id. at ¶ 15.

On June 7, 2000, Dr. Lasky⁸ met with Lattimore to discuss his decision to discontinue his chemotherapy treatments. Id. at § 16. They again met on June 8, 2000 and Lattimore still did not want to continue with the chemotherapy treatments. Lattimore indicated that he wanted to wait until he was transferred to a permanent institution to begin radiation treatments. On that date, Lattimore signed an Against Medical Advice form indicating that the failure to have the treatment could increase his symptoms from Hodgkin's disease. (Doc. No. 78, Exhibit B, p. 57, copy of release from responsibility for medical treatment).

8. Dr. Lasky has served as Wexford Health Sources' Medical Director at SCI-Camp-Hill since September, 1996, when Wexford became the contracted medical provider. His services include the examination, diagnosis and treatment of inmates at the facility, as well as referral of inmates for consultations with outside physicians whenever medically necessary. Id. at ¶3.

On July 25, 2000, Lattimore was seen by Physician Assistant Michael Sims. At that time, he requested to see Dr. Lasky concerning chemotherapy. (Doc. No. 78, Exhibit A, Lasky Dec., ¶ 18). On July 29, 2000, Dr. Lasky spoke with Lattimore about his treatment options for the Hodgkin's disease. Dr. Lasky approved a consultation for a follow-up visit with the oncologist and also ordered blood work to be performed prior to the next visit with the oncologist. Id. at ¶ 19. On August 1, 2000, plaintiff's blood work was performed and the results were forwarded to Dr. Cadiz for the August 14, 2000 follow-up visit for chemotherapy. Id. at ¶ 20.

On August 14, 2000, Lattimore was evaluated by Dr. Cadiz. At that time, he received day fifteen of his third cycle of chemotherapy and there was some discussion as to whether or not he could proceed directly to radiation therapy or if he should complete the prescribed chemotherapy. Id. at ¶ 21.

On August 24, 2000, Dr. Lasky spoke with Dr. Barnes at Hematology and Medical Oncology Associates, P.C. to determine whether Lattimore should remain on medical hold at SCI-Camp Hill to complete the prescribed chemotherapy or whether it would be appropriate to transfer him to his permanent institution to pursue further treatment for his Hodgkin's disease. Id. at ¶ 22. A consult for a follow-up evaluation by Dr. Barnes at Hematology and Medical Oncology Associates, P.C. was

approved on August 29, 2000, .

On September 26, 2000 Dr. Barnes evaluated the plaintiff and requested follow-up CT Scans of plaintiff's chest and upper abdomen. Id. at ¶ 23. The CT Scans conducted at Smith Radiology, Inc. on October 3, 2000 noted no significant interval change since the time of the previous CT Scan of the chest on April 4, 2000. The CT Scan of the abdomen was normal. Id. at ¶ 24.

On October 10, 2000, Dr. Barnes again evaluated Lattimore. There was no new symptomology referable to his Hodgkin's disease, however, Dr. Barnes requested a biopsy to determine whether to refer plaintiff for radiation therapy or whether to continue with the chemotherapy. Id. at ¶ 25. The biopsy of the lymph node from plaintiff's neck was performed on October 26, 2000 and there was no evidence of malignancy. Id. at ¶ 26.

On November 14, 2000, plaintiff Dr. Barnes evaluated plaintiff again. It was noted that plaintiff now had biopsy-proven remission of the Hodgkin's disease. At that time, Dr. Barnes indicated that he would like the opinion of a radiation oncologist to see whether or not radiation therapy was appropriate. Id. at ¶ 27.

On November 15, 2000, Dr. Lasky approved a consultation request to have the plaintiff seen at Oakwood Radiation Center for evaluation of the appropriateness of

radiation therapy. Id. at ¶ 28.

On December 13, 2000, Dr. Lasky approved a consultation request for a PET Scan to determine whether there was residual Hodgkin's disease in the chest. If the PET Scan was positive, then Lattimore would be referred for radiation therapy. The PET Scan, however, was cancelled because the plaintiff exceeded the 300-pound weight limit of the Scan table. Id. at ¶ 29.

On February 1, 2001, the plaintiff was transferred to SCI-Graterford. He was examined on March 8, 2001, by Carl Sharer, D.O., and oncologist, who saw no evidence of recurrent disease. Id. at ¶ 30. On March 15, 2001, a Gallium Scan was conducted and was read as normal. Id. at ¶ 31.

In an attempt to counter Dr. Lasky's affidavit and the materials submitted by defendants, the plaintiff has submitted a brief in opposition to the defendants' motion for summary judgment, a statement of material facts, and exhibits. (Doc. No. 82). These documents, however, contain nothing more than a mere restatement of the claims already alleged in the plaintiff's original complaint, as well as legal argument.

Rule 56(c) requires that the party who bears the burden of proof make a sufficient showing to establish the existence of an element essential to that party's case. Rule 56(e) specifies the type of evidentiary materials which must be submitted.

Thus, even had defendants submitted no evidentiary matters, the burden would still be on the plaintiff to sustain his burden. Celotex v. Catrett, 477 U.S. 317 (1986). What plaintiff has done is submit so called "statement of undisputed material facts", unsupported by any evidentiary materials, which amounts to a mere elaboration of the allegations in his complaint, and this he cannot do. See Applegate v. Top Associates, Inc., 425 F.2d 92 (2nd Cir. 1970). (A mere elaboration of conclusory pleadings is insufficient). As the court in Quiroga v. Hasbro, Inc., 934 F.2d 497 (3d Cir. 1991) stated, a party opposing summary judgment may not rest upon mere allegations, general denials, or vague statements that conduct occurred. The evidence submitted must show more than some metaphysical doubt as to the material facts. Id. at 500.

Moreover, the plaintiff has submitted no expert medical opinion to controvert the defendants' expert medical opinion. When expert opinion is offered in support of a motion for summary judgment, the opposing party must supply opposing expert opinion to create a triable issue of fact. Gaus v. Mundy, 762 F.2d 338 (3d Cir. 1985). Rather, plaintiff relies on his own unsupported lay-person speculation, which he cannot do. Borig v. Kozakiewicz, 833 F.3d 468, 473 (3d Cir. 1987)(plaintiff failed to meet burden of proof by failing to offer expert testimony that his injury was

“serious”).

On the other hand, the defendants have submitted an affidavit and materials in support of their motion which have not been controverted by the plaintiff. Thus, the material facts set forth by the defendants may be accepted as true. Shulz v. Celotex, 942 F.2d 204 (3d Cir. 1991); Anchorage Associates v. V.I. Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990); Gaus v. Mundy, 762 F.2d 338 (3d Cir. 1985).

The undisputed facts illustrate clearly that plaintiff received medical care. While plaintiff may have not been satisfied with the degree of care he received, the record establishes meaningful efforts by the defendants to provide Lattimore with necessary medical care, and an attendant mental state that falls woefully short of deliberate indifference. Moreover, the record reveals that any delay in treatment was clearly a result of plaintiff's own doing.

Lattimore has failed to present evidence from which a reasonable jury could conclude that the defendants possessed the culpable mental state necessary for Eighth Amendment liability to attach. There is insufficient proof in the record for a fair-minded jury to conclude that the defendants were deliberately indifferent to Lattimore's medical needs. See Estelle v. Gamble, 429 U.S. 97, 106 (1976);

Monmouth County Correctional Institution Inmates v. Lanzaro, 834 F.2d at 346;
West v. Keve, 571 F.2d at 161. Indeed, the scope and quality of medical attention
that the defendants provided Lattimore precludes a finding of deliberate indifference.
Therefore, the motions for summary judgment filed by defendants will be granted.
An appropriate order is attached.



JOHN E. JONES III
United States District Judge

DATED: December 2 , 2002

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT M. LATTIMORE, JR.,

Plaintiff

vs.

MARTIN LASKY, M.D., et al.,

Defendants

No. 4:CV-01-0124

(Judge Jones)

ORDER

NOW, THEREFORE, THIS 2nd DAY OF DECEMBER, 2002, for the reasons set forth in the foregoing Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Defendants' motions for summary judgment, (Doc. No. 70 & 75), are granted. Judgment is hereby entered in favor of the defendants and against plaintiff.
2. The Clerk of Court shall close this case.
3. Any appeal taken from this order will be deemed frivolous, without probable cause, and not taken in good faith.


JOHN E. JONES III
United States District Judge