

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jay V. Yunik, :  
 :  
 : Petitioner :  
 :  
 : v. :  
 :  
 : Jeffrey Beard, D.O.C. Secretary, :  
 : Mr. Nickelson, deputy Supt., SCI- :  
 : Fayette, Mr. Armel, deputy Supt., :  
 : SCI-Fayette, Brian V. Coleman, :  
 : Superintendent, SCI-Fayette, :  
 : Rhonda House, grievance officer, :  
 : SCI-Fayette, Norina Varner, :  
 : grievance officer, SCI-Fayette, :  
 : W. W. Jones, Captain, SCI-Fayette, :  
 : C. Myers, physician's assistant, :  
 : SCI-Fayette, K. Randolph, registered :  
 : nurse, SCI-Fayette, S. Berrier, :  
 : acting C.H.C.A., SCI-Fayette, :  
 : Herbick, Medical doctor, SCI- :  
 : Fayette, :  
 : Respondents :

No. 655 M.D. 2010

PER CURIAM

ORDER

Now, November 18, 2010, upon consideration of respondents' preliminary objections and petitioner's response thereto, the objections are sustained, and the petition for review is dismissed.

Petitioner avers that he injured his back in 2005 and 2006 for which he was prescribed Ibuprofen and received physical therapy. He avers that upon his transfer to SCI-Fayette in 2009 his condition worsened. He submitted sick call requests, and was denied treatment by respondent Myers.

Petitioner avers that since June 2010, he is being denied refills of his Ibuprofen unless he pays a co-pay fee. Petitioner avers that respondents have demonstrated deliberate indifference to his serious medical need, are denying him access to prescribed medical treatment, and have impermissibly redefined what constitutes a chronic or pre-existing condition in order to charge a fee for medications he previously received at no cost. Petitioner seeks an order directing respondents to provide him with requested medication at no cost.

An inmate has no constitutional right to free medical services and prescription medication, and respondent's co-pay program does not impose an atypical or significant hardship when compared to the normal incidents of prison life. Portalatin v. Dep't of Corr., 979 A.2d 944 (Pa. Cmwlth. 2009). An inmate's inability to obtain the treatment of his choice does not state a claim for deliberate indifference; disagreement with prison physicians over the proper means of treating an inmate's medical condition does not rise to the level of a constitutional violation. Kretchmar v. Dep't of Corr., 831 A.2d 793 (Pa. Cmwlth. 2003).

The Department of Corrections is statutorily authorized to establish by regulation a medical services program that includes co-pay fees for medical services. 61 Pa. C.S. §3303(a) (formerly 61 P.S. §1013). Although petitioner characterizes his medical need as "chronic," his factual averments do not establish that he has a chronic disease or illness as defined by 37 Pa. Code §93.12 or DC-ADM 820. Petitioner's factual

averments do not establish that he is being denied medical services because of an inability to pay the required fees. Petitioner's factual averments do not mention Dr. Herbik; his bare averment that he twice submitted sick call requests and that respondent Myers "refused treatment" fails to state a claim against Myers.

Petitioner's Petition to Amend, which seeks leave to amend the caption to add Prison Health Care Services, Inc. as a respondent, is denied. Petitioner's Motion for Temporary Injunction, which sought an order to compel the institutional medical staff to provide unspecified medical treatment, is denied.

**Certified from the Record**

**NOV 19 2010**

**And Order Exit**

**RECEIVED**

NOV 22 2010

*Ca*  
Office of Chief Counsel  
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