

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

SHAWN HARPER,	:	No. 3:03cv1228
Plaintiff	:	
	:	(Judge Munley)
v.	:	
	:	
U.S. PENITENTIARY LEWISBURG;	:	
WARDEN D. SCOTT DODRILL;	:	
HOSPITAL ADMINISTRATOR	:	
JOHN HEMPHILL; AGENTS and	:	
EMPLOYEES,	:	
Defendants	:	

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MEMORANDUM

Before the Court for disposition is Plaintiff Shawn Harper’s complaint for a permanent injunction. Harper is an inmate at the U.S. Penitentiary at Lewisburg, Pennsylvania, (“USP-Lewisburg”). He seeks an order permanently enjoining defendants from interfering, in violation of the Eighth Amendment, with the expeditious diagnosis and treatment of his medical problems at an independent medical facility. Defendants have not acted with deliberate indifference to Harper’s serious medical condition; therefore we will deny his application for an injunction.

Background

The relevant facts regarding Harper’s health and the treatment he has received at USP-Lewisburg are not in dispute. Harper has been diagnosed with three ailments: Helicobacter pylori (“H. pylori”), type II diabetes, and hepatitis C. (Excerpt of Proceedings (“E.P.”) July 31, 2003 at 5, 9, 29). Anthony Bussanich, M.D., the clinical director at USP-Lewisburg, is treating Harper for all three of his diagnosed ailments. (See generally E.P.)

In addition to H. pylori, diabetes, and hepatitis C, Harper has also been contending with a dramatic weight loss over the past year. (E.P. at 8). Harper's complaint puts his weight loss at 80 pounds and testimony at a July 31, 2003 injunction hearing on this matter suggested that Harper may have lost up to 100 pounds. (Compl. ¶¶ 4, 7). Defendants acknowledge that Harper has lost a great amount of weight. (E.P. at 8). In addition to his weight loss, Harper reports stomach cramps resulting in debilitating pain in his abdomen. (Compl. ¶¶ IV, VII).

Harper alleges that the defendants are denying him medical treatment, in violation of the Eighth Amendment's prohibition against cruel and unusual punishment, by refusing to admit him to a private medical facility. As a result, he initiated the instant action on July 23, 2003, in which he seeks to permanently enjoin defendants from interfering with and/or preventing an independent medical examination at an outside facility. Pursuant to Rule 65, a consolidated hearing was held on July 31, 2003, and the matter is now ripe for disposition.

Jurisdiction

We exercise jurisdiction over this civil action pursuant to 28 U.S.C. § 1331.

Standard of Review

A court may issue a permanent injunction when the plaintiff satisfies three requirements. Northeast Women's Center, Inc. v. McMonagle, 665 F. Supp. 1147, 1152-1153 (E.D. Pa. 1987). First, the exercise of equity jurisdiction must be appropriate. Id. (citing Younger v. Harris, 401 U.S. 37, 43-44 (1971)). Second, the plaintiff must succeed on the merits. Id. (citing Ciba-Geigy Corp. v. Bolar Pharm. Co., 747 F.2d 844, 850 (3d Cir. 1984)). Third, the plaintiff must demonstrate that the balance of equities is in favor of granting a permanent injunction. Id. (citing Ciba-Geigy Corp. v. Bolar Pharm. Co., 747 F.2d

844, 850 (3d Cir. 1984)). With these standards in mind, we consider Harper's complaint for a permanent injunction.

Discussion of Facts and Law

We will deny Harper's application for a permanent injunction because he cannot succeed on the merits of his Eighth Amendment claim. As noted, Harper alleges that defendants are denying him medical treatment by refusing to have him evaluated at a private medical facility.

To state an Eighth Amendment claim for inadequate medical care, a plaintiff must show "(i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." Natale v. Camden Cty. Correctional Facility, 318 F.3d 575, 582 (3d Cir. 2003). There is no dispute in this case that Harper has serious medical needs. His weight loss alone attests to that fact. However, defendants deny that they have acted with deliberate indifference in the face of Harper's obvious medical needs.

An official acts with deliberate indifference to an inmate's medical needs when he is "aware of and knowingly disregard[s] an excessive risk to inmate health. . . ." Wesley v. Vaughn, 2002 WL 1286898, at *2 (E.D. Pa. June 4, 2002). Negligence in medical diagnosis and/or treatment does not constitute deliberate indifference, and neither does medical malpractice. Id.; see also Calhoun v. Horn, 1997 WL 769523, at *4 (E.D. Pa. Oct. 8, 1997) (listing examples of deliberate indifference). If a prison has extensively treated an inmate's medical problems, a claim of deliberate indifference cannot survive. Calhoun, 1997 WL 769523 at *5 (citing Estelle v. Gamble, 429 U.S. 97, 107 (1976)).

There is nothing in the record to suggest that any of the defendants have acted with deliberate indifference to Harper's medical needs. Defendants are aware of and treating Harper's H. pylori, diabetes,

and hepatitis C. (E.P. at 5, 9, and 29). Dr. Bussanich and others at USP-Lewisburg are also actively engaged in attempting to diagnose the etiology of Harper's weight loss and pain. Dr. Bussanich testified that he is operating on the hypothesis that Harper's body is not absorbing nutrients. (E.P. at 6-7). To that end, he has had Harper undergo tests for tumors in the gastrointestinal tract that may be the source of his weight loss and pain. (E.P. at 7).

On June 5, 2003, Harper underwent a KUB (kidney, ureter, and bladder) film, or x-ray. Dr. Bussanich was looking for a stone or other obstruction that may have been responsible for Harper's pain. (E.P. at 7). The test came back negative, however. (E.P. at 7).

Dr. Bussanich then turned his attention to the upper half of Harper's intestinal tract and ran an H. pylori test. (E.P. at 9). The test was positive for H. pylori, which was treated through two rounds of antibiotic treatments. (E.P. at 9-11). Dr. Bussanich testified, however, that H. pylori could not be the cause of Harper's weight loss and pain. (E.P. at 10-11).

An upper GI test was also performed on Harper. The test revealed mild inflammation, but it was negative for any sort of tumor that may have been the etiology of Harper's problems. (E.P. at 11-12). After the upper GI test, Dr. Bussanich continued conservative treatment of Harper with medications. (E.P. at 14). But, as that failed to halt the weight loss and pain, Dr. Bussanich scheduled Harper to see a GI specialist for an evaluation. (E.P. at 15). The GI specialist concluded that an endoscopy was necessary to try and pinpoint the source of Harper's weight loss and pain, and an endoscopy was performed on July 25. (E.P. at 15). The endoscopy revealed some minor inflammation, but nothing to suggest that Dr. Bussanich's treatment of Harper was inappropriate. (E.P. at 18). A CAT scan was also performed. It revealed an abnormal collection of veins and arteries in Harper's liver, but again nothing abnormal or that could be

pointed to as an etiological indicator. (E.P. at 18).

Despite Harper's medical treatment, there is still no explanation for his pain and weight loss. (E.P. at 20). Harper is treated with Tylenol III for his pain, and Dr. Bussanich plans further repeat blood work and a thyroid test. (E.P. at 23-24). He also plans to have a colonoscopy performed. (E.P. 24). Finally, Dr. Bussanich stated that if the colonoscopy should come back negative and the weight loss and pain persist, then Harper would probably be referred to a Bureau of Prisons medical facility. (E.P. at 24).

Given these facts, there is simply no basis to conclude that defendants are deliberately indifferent to Harper's medical needs. They are aware of his medical condition and have taken consistent steps to diagnose and treat his symptoms. We are sympathetic to the concerns of Harper's family. It is exceedingly difficult to watch a family member's health deteriorate. Nonetheless, dissatisfaction with medical treatment is not, by definition, grounds for a deliberate indifference claim. Monmouth Cty. Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987). Harper cannot succeed on the merits of his Eighth Amendment claim. Accordingly, we will deny his application for a permanent injunction. An appropriate order follows.

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Defendants		:

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ORDER

AND NOW, to wit, this 7th day of August, 2003, plaintiff's application for a permanent injunction (Doc. 1) is hereby **DENIED**, and the Clerk of Court is directed to close this case.

BY THE COURT:

JUDGE JAMES M. MUNLEY
United States District Court

Filed: August 7, 2003