IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DERRICK PHIPPS, et al. Plaintiff, v. SHERIFF OF COOK COUNTY, and COOK COUNTY, ILLINOIS, Defendants.	No. 07 C 3889 Judge Elaine Bucklo Magistrate Judge Cole

THE SHERIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOW COMES Defendant, Sheriff of Cook County, by and through his attorneys, Querrey & Harrow, Ltd., and moving for Summary Judgment, states as follows:

INTRODUCTION

Increasing accessibility for disabled individuals is important. But limits to this endeavor exist. The ADA recognizes the logistical difficulties in making older buildings accessible. This burden is exacerbated in the correctional context. The prevalence of suicide and theft, along with inmates' penchant for makeshift weapons, mandate that security trump accessibility. Because Plaintiffs' claims are barred by the PLRA, swallowed by exceptions to the ADA, and precluded by precedent, summary judgment is proper.

Plaintiffs' case fails because it lacks coherence. Instead of addressing the cause of action, Plaintiffs dredge up any issue with a hint of potential. The result is a disjointed suit: Plaintiffs sue for discrimination, yet base their claim on physical injuries. These "injuries" are preexisting conditions commonly suffered by wheelchair bound persons. Plaintiffs' deposition questions have become a referendum on the CCDOC's shower and toilet heights, items not even governed by the operative

ADA section. Underlying this kitchen-sink approach is Plaintiffs' novel theory: suing for disability discrimination based on preexisting conditions.

BACKGROUND

The Sheriff adopts and incorporates herein the Background section of co-Defendant Cook County set forth in the County's Summary Judgment Motion.

ARGUMENT

I. Standard of Review.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). Summary judgment should be granted where the non-moving party "has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Celotex v. Catrett*, 477 U.S. 317, 322 (1986). Because the Sheriff satisfies the summary judgment standard, the Court should grant this Motion.

II. Plaintiffs Did Not Exhaust Their Administrative Remedies.

This suit is barred by the Prison Litigation Reform Act ("PLRA").[1] Under the PLRA, no action may be brought regarding prison conditions unless the prisoner has exhausted administrative remedies. 42 U.S.C. § 1997e(a). There is no exception under the PLRA for claims under the ADA. *Cassidy v. Indiana Dep't. of Corr.*, 199 F.3d 374, 376-77 (7th Cir. 2000). This Court applied the exhaustion requirement to an ADA claim in *Bolden v. Stroger*, 2005 WL 283419 (N.D. Ill. 2005) (Bucklo). A class of detainees claimed they were restricted from pre-release programs. The Court found the claim concerned "prison conditions" because it involved "whether detainees are eligible for

[1] The present discussion is confined to the ADA, but applies to Plaintiffs' Rehabilitation Act claim also. The Sheriff adopts and incorporates herein the County's argument that the Rehabilitation Act does not apply. The Sheriff also adopts and incorporates herein the County's argument that this matter is precluded by the *Duran* consent decree.

participation in the various release programs." *Id.* at *2. As the plaintiffs did not use the grievance process provided, the ADA count failed.

The fate of the *Bolden* plaintiffs should befall this class. Plaintiffs have not complied with the exhaustion requirement. The Court can take judicial notice that the CCDOC has a well established grievance procedure set forth in General Order 14.5. (SOF 46-49). A detainee wishing to file a grievance must fill out the Inmate Grievance Form. (SOF 46-49). Within five days of receiving the grievance, the Correctional Rehabilitation Worker provides a written copy of the findings to the detainee. (SOF 46-49). If the detainee wishes to appeal the grievance decision, the detainee has five days from receipt of the decision to appeal to the Administrator of Program Services. (SOF 46-49). The Administrator of Program Services has ten days to review the grievance appeal and to reply to the detainee. *Id.* All appeal decisions are final. (SOF 46-49).

While the Amended Complaint alleges two members filed grievances, scrutiny says otherwise. The grievance by Ken Courtney contains two fatal flaws. (SOF 50). First, the grievance did not allege discrimination or physical injury. It merely expressed a desire for a specific shower chair, as Courtney disliked the chair provided. Notably, the chair provided did not preclude Courtney from using the shower. Rather, he found it inconvenient. Thus, the catalyst for Courtney's grievance was not discrimination, physical injury, or lack of a shower chair. In alleging discrimination and denial of services, Plaintiffs sue for things never complained of. As Defendants were not on notice of these claims, they cannot be pursued.

The second problem is that Courtney's grievance did not follow the necessary timing requirements. Courtney filed a request for a shower chair on November 28, 2006. (SOF 50). A grievance processed as a request is not appealable. (SOF 50). If the detainee is not satisfied with the response, the detainee may resubmit the concern and it will be processed as a grievance. (SOF 50). When processed as a "request," an appeal of the response or action taken cannot be made. (SOF 50).

Here, the request was not granted, necessitating Courtney file a grievance. (SOF 50). Courtney did so on December 11, 2007. (SOF 50). But Plaintiffs had filed their Complaint six months earlier, on July 11, 2007. As the suit was commenced before Courtney filed his grievance, it crumbles.

An inmate who begins the grievance process but does not complete it is barred under the PLRA for failure to exhaust administrative remedies. *Jernigan v. Stuchell*, 304 F.3d 1030, 1032 (10th Cir. 2002). This issue was addressed in *Truly v. Sheriff*, 2004 U.S. Dist. LEXIS 7112 (N.D. Ill. 2004) *aff'd.*, 135 Fed. Appx. 869 (7th Cir. 2005). Plaintiff filed grievances and received responses to those grievances. However, the plaintiff failed to appeal those grievances, merely filing additional grievances. As CCDOC procedure mandated an appeal, the court found plaintiff failed to exhaust his administrative remedies. *Id.* at *9. *See also Wright v. Hollingsworth,* 260 F.3d 357, 358 (5th Cir. 2001) (inmate who complied with administrative procedure but did not see the process to its end did not exhaust remedies). This Court should find similarly. Timelines are unforgiving, and Plaintiffs cannot escape the reality that they began the suit before the grievance process ended.

The Amended Complaint also alleges James Grant filed a grievance. (SOF 1 at ¶ 14). But Grant's grievance concerned items unrelated to the class action. They included medical concerns for pain management, tables, non-working telephones, shower buttons, and barber services. (SOF 22). This grievance did not address the complaints alleged in the Amended Complaint and are therefore unrelated to the issues in this case.

The problems with Grant's grievance are captured by *Brazier v. Maricopa County*, 2006 U.S. Dist. LEXIS 12538 (D. Ariz. 2006). *Brazier* involved a suit brought by an inmate who was beaten by fellow inmates. The grievance had sought removal from segregation. It did not address defendant's failure to protect plaintiff from his fellow inmates. The court found plaintiff's grievance unrelated to his allegations and thus held plaintiff failed to exhaust his remedies. *See also Howell v. Hall*, 2006

U.S. Dist. LEXIS 60915 (D. Or. 2006) (plaintiff failed to exhaust his remedies because his grievance was unrelated to the complaint.).

In sum, Plaintiffs cannot satisfy the exhaustion requirement. The grievances do not relate to the allegations of the Amended Complaint. In any event, Courtney's grievance was not appealed before the commencement of this suit. Because Plaintiffs have not exhausted their administrative remedies, summary judgment is warranted.

III. Plaintiffs Are Barred by the PLRA Because There Is No Physical Injury.

Even if the Court determines Plaintiffs exhausted the grievance process, the PLRA still applies. The PLRA mandates that Plaintiffs allege a physical injury. They have not.

A. The catalyst of this suit is mental and emotional injuries.

The PLRA mandates that no federal civil action may be brought by a prisoner "for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). Section 1997e(e) "limits the damages available to prisoners not only for constitutional torts, but for violations of federal statutes." *Koger v. Bryan*, 523 F.3d 789, 804 (7th Cir. 2008). This principle is reflected by *Cassidy v. Indiana Dep't. of Corr.*, 199 F.3d 376 (7th Cir. 2000). In *Cassidy,* an inmate sued under the ADA because the facility denied him access to services. The Seventh Circuit held for the defendant, noting § 1997e(e) "unambiguously states that 'No Federal civil action' shall be brought for mental or emotional damages without a prior showing of physical injury." *Id.* at 378. Lacking a physical injury that violated the PLRA, the court refused to "carve out exceptions for which Congress did not provide." *Id.*

Cassidy instructs that inmates suing because of denial of services succumb to the PLRA. The basis for this suit is discrimination – the class being those individuals "subjected to discrimination." As discrimination is a mental and emotional injury, the suit is incompatible with the PLRA. In addition to the non-physical basis for this suit, the physical components alleged are unrelated.

Discrimination did not cause bed sores or falls from wheelchairs. While further discussed below, bed sores and falling from a chair are hazards inherent to life in a wheelchair. These unfortunate realities cannot be the vehicle to circumvent the PLRA. As Plaintiffs already suffered the travails of being in a wheelchair, no connection between the injuries and discrimination exists.

To reiterate, Plaintiffs cannot establish a physical injury due to the class definition. This case is unlike *Robinson v. Page*, 170 F.3d 747 (7th Cir. 1999). In *Robinson*, the Seventh Circuit held a prisoner's claims for emotional injury were not barred by the PLRA because it was not yet established if the prisoner could show a physical injury. *Id.* at 749. Plaintiffs here are tethered to their class definition. Suffering discrimination because one cannot participate in a program is not synonymous with physical injury. There is no precedent for an inmate's ADA discrimination suit based on physical injury. The reason is clear – they are two distinct concepts. Plaintiffs' attempt to pound a square peg into a round hole should be rejected.

B. Bed sores and falling out of a wheelchair are not cognizable injuries.

Even if the Court finds a connection between the injuries alleged and denial of services, Plaintiffs still cannot prevail. In the absence of physical injury, Plaintiffs cling to existing medical conditions common to those confined in wheelchairs as a means of meeting the injury requirement of the PLRA. But these symptoms are typical. Moreover, the Plaintiffs have been in wheelchairs for years. They understand routine washing is necessary to minimize bed sores and caution needed when transferring out of the chair.

The standard under § 1997e(e) of the PLRA requiring physical injury raises the question, what is a physical injury? While the PLRA does not define it, most courts have determined the physical injury must be more than *de minimis*. The Seventh Circuit has not explicitly addressed the issue. Other courts that have, including this one, reveals that even if Plaintiffs' conditions are deemed injuries, they are *de minimis*.

A physical injury must be "more than *de minimis*" to overcome the bar of § 1997e(e). *Liner v. Goord*, 196 F.3d 132, 135 (2d Cir. 1999). Circuit courts have consistently applied the *de minimis* approach first adopted in *Siglar v. Hightower*, 112 F.3d 191 (5th Cir. 1997). In *Siglar*, a prisoner filed a § 1983 claim after guards bruised his ear. The ear was bruised for three days, but he did not seek medical treatment. The Fifth Circuit rejected the prisoner's claim. "Eighth Amendment standards guide our analysis in determining whether a prisoner has sustained the necessary physical injury to support a claim for mental or emotional suffering. That is, the injury must be more than *de minimus*, but need not be significant." *Id.* at 193.

This Court also applies the *de minimis* test. The PLRA barred recovery because "the plaintiff suffered no real physical injury" when he suffered dizziness and headaches in *Hammond v. Briley*, 2004 U.S. Dist. LEXIS 1122, *14-15 (N.D. Ill. 2004). Headaches, insomnia, and stomach anxiety did not constitute a physical injury sufficient to overcome the PLRA in *Cannon v. Burkybile*, 2000 U.S. Dist. LEXIS 14139, *19 (N.D. Ill. 2000). Elevated blood pressure, aggravated hypertension, and insomnia were held *de minimis* in *Todd v. Graves*, 217 F.Supp.2d 958 (S.D. Iowa 2002). If such claims were permissible, "very few plaintiffs would be barred by the physical injury rule." *Id.* at 960. These cases reflect common sense. The PLRA would be rendered nugatory if minor injuries survived the PLRA bar.

The conditions Plaintiffs characterize as injuries are bed sores and falling out of wheelchairs when attempting to transfer. These injuries are *de minimis* in the sense that they were not spawned in the CCDOC. Bed sores were not the result of a CCDOC policy, and while inmates fell out when transferring, their injuries were minor. In other words, these are recurring problems transcending incarceration. Colette Connolly, a clinical nurse specialist with Cermak explained that "99% of the people come to me with bed sores. So they have already had them before they already come into the facility." (SOF 32). The Sheriff does not downplay these conditions, rather, they simply were not

caused by him. Plaintiffs' attempt to recover for inherent, preexisting conditions strains the tenets of tort law.

Courtney alleges his bed sores have become "infected as a result of not being able to shower." (SOF 1 at ¶ 13). Grant makes a similar allegation. (SOF 1 at ¶ 15). These claims fail.[2] Plaintiffs have never suggested they lacked access to showers due to, for example, steps to the shower preventing their entrance. Rather, their "not being able to shower" stemmed from a personal choice made by Plaintiffs. Dislike for the shower chair is the basis for not showering and the source of worsened bed sores. Personal preference is not a recognized basis for an ADA suit.

Review of the record also exposes the flaws of Plaintiffs' other condition – difficulty transferring from their chairs. Colette Connolly explained that Cermak would not accept inmates "unless they have gone through some type of rehab where they can transfer from at least bed to wheelchair, wheelchair to commode." (SOF 31). Connolly monitored all new inmates' ability to transfer out of their chair. If they could not, Cermak did not accept them. (SOF 33). Thus, the Plaintiffs housed in Cermak would have demonstrated to Connolly that they could transfer from the chair to the toilet and shower chair. (SOF 33). Their allegation that they had difficulties is eviscerated by this fact.

The novelty of Plaintiffs' argument is captured by the absence of similar precedent. Virtually no court addresses whether a preexisting injury can be the basis to survive a PLRA bar. The single case found is *Herron v. Patrolman # 1*, 111 Fed. Appx. 710, 713 (5th Cir. 2004) . The Fifth Circuit held that "rough handling, which resulted in a temporary increase of pain in his already injured neck" did not constitute more than a *de minimis* physical injury to plaintiff. Like *Herron*, Plaintiffs already

[2] The Ninth Circuit did recognize bed sores as cognizable in *Pierce v. County of Orange*, 526 F.3d 1190, 1224 (9th Cir. 2008). But in that case the bed sores were the result of the defendants' refusal to provide a proper mattress. Here, Plaintiffs' bed sores became infected because the Plaintiffs did not like the shower chair provided.

suffered the ailment of bed sores. Plaintiffs' efforts to capitalize on preexisting conditions should be rejected.

C. Summation.

Plaintiffs cannot recover for a preexisting condition when the allegation is discrimination. Moreover, the conditions complained of are not cognizable as they are maladies endemic to life in a wheelchair. As the PLRA applies, summary judgment is warranted.

IV. Defendants Did Not Discriminate on the Basis of Disability.

The Sheriff's underlying premise is straightforward: Plaintiffs cannot reach the merits. Plaintiffs have neither exhausted the grievance process, alleged a cognizable physical injury, nor alleged the Defendants acted intentionally.[3] If Plaintiffs are able to overcome these hurdles, they should ultimately succumb to the merits.

A. Shower and toilet heights are not covered by Title II of the ADA.

The ADA was designed "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title II of the ADA provides that "no qualified individuals with a disability" shall be denied access to "services, programs, or activities of a public entity." 42 U.S.C. § 12132. Title II applies to inmates in state and local prisons. *Pennsylvania Dep't. of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998). To establish a Title II violation, a plaintiff must show he (1) is a qualified individual with a disability; (2) discriminated against with regard to a public entity's services; and (3) such discrimination was based on that disability. 42 U.S.C. § 12132.

Defendants do not contest that Plaintiffs meet the first prong of the test, they are "qualified individuals with a disability." But Plaintiffs fail on the remaining elements. An inmate cannot be

[3] The Sheriff adopts and incorporates herein the County's argument regarding Plaintiffs' failure to allege intentional discrimination and that shower and lavatory access are not programs or services.

categorically excluded from a beneficial prison program based on his disability alone. *Yeskey,* 524 U.S. at 210. But this has not and cannot be shown here. Plaintiffs were not discriminated against because they had access to showers and toilets. Plaintiffs claim the difficulties showering and using the toilet amounted to a denial of services. But this is a barrier removal issue encompassed by Title III, not Title II.

Title III of the ADA prohibits discrimination in places of public accommodation against persons with disabilities. 42 U.S.C. § 12182(a). Discrimination includes "a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable." 42 U.S.C. § 12182(b)(2)(A)(iv). Defendants found no authority in which a jail was subject to Title III. To the contrary, the Title II Technical Assistance Manual states that "public entities are not subject to Title III of the ADA which covers only private entities." (SOF 35-36). Case law also instructs that a jail does not constitute a place of "public accommodation." *See Edison v. Douberley*, 2008 U.S. Dist. LEXIS 68152 (M.D. Fl. 2008) (finding public accommodation under Title III to not include state prison); *Morgan v. Mississippi*, 2008 U.S. Dist. LEXIS 74001 at *5-6 (S.D. Miss 2008) (same); *Brown v. King County*, 1998 U.S. Dist. LEXIS 20152 at *6 (W.D. Wash. 1998) (county correctional facility is not a place of public accommodation). Plaintiffs can point to nothing suggesting Title III applies to jails. As toilet and shower heights concern barrier removal, i.e., Title III, these allegations fail.

B. The RTU Predates the ADA.

Even if the Court finds the allegations fall within the ambit of Title II, the RTU is exempted from its most onerous restrictions. Whether Plaintiffs were discriminated against because of shower and toilet accessibility necessitates consideration of when the facility was built. This factor favors the Sheriff. The ADA recognizes three categories of buildings: newly constructed, existing with new

alterations, and existing without alterations. These distinctions delineate the requisite standard. Each is addressed in turn.

A newly constructed building (built after 1991) is subject to the highest standard. It must be readily accessible to individuals with disabilities. "Each facility … for the use of a public entity shall be designed and constructed in such manner that [it] is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.151. An intermediate standard is applied to older buildings altered after the ADA's implementation date. Such a facility must, "to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.151(b). The lowest compliance standard is for existing facilities without new alteration. Public entities falling in this category are not required to "modify each facility to provide for access by individuals with disabilities," but must operate all services such that an existing facility is "readily accessible to and usable by individuals with disabilities." 28 C.F.R. § 35.150(a).

The RTU is a dormitory setting with no cells. It is used exclusively for the housing of handicapped individuals. It was built in 1984 and has never undergone an alteration such that the intermediate standard applies. (SOF 26). Thus, the RTU falls under the existing facilities standard, the least restrictive. (SOF 35-36).

Although the ADA does not provide for reasonable modifications, the implementing regulations provide that "a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability."[4] 28 C.F.R. § 35.130(b)(7). The regulations also contain an important caveat relevant to the scope of

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[4] Title II's use of the term "reasonable modifications" is essentially equivalent to Title I's use of the term "reasonable accommodation." *See McGary v. City of Portland*, 386 F.3d 1259, 1266 (9th Cir. 2004) ("Although Title II of the ADA uses the term 'reasonable modification,' rather than 'reasonable accommodation,' these terms create identical standards").

the accommodation obligations imposed. A public entity is not required to provide disabled individuals with "personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; or services of a personal nature including assistance in eating, toileting, or dressing." 28 C.F.R. § 35.135. Thus, a demand for a wheelchair under the ADA and the Rehabilitation Act was rejected in *Kerry M. v. Manhattan Sch. Dist. # 114*, 2006 U.S. Dist. LEXIS 71109 (N.D. Ill. 2006).

Reasonable accommodations in the RTU could only be satisfied by personal devices such as removable wheelchair parts, grab bars, shower chairs, and height adapters. The following section sets forth why these accommodations could not be made.

C. Institutional security often precludes the availability of reasonable accommodations in correctional settings.

Title II does not require a fundamental alteration to the nature of the service, and a prison need not employ every mean to accommodate. *Lane v. Tennessee,* 541 U.S. 509, 532 (2004). Thus, a public entity is not required to provide accommodations that would result in "undue financial and administrative burdens." *Id.* A public entity is not required to provide disabled individuals with personal devices, such as wheelchairs, prescription eyeglasses, or hearing aids. (SOF 58). In the instant case, what is "reasonable" must also be viewed in the context of the prison environment. Consideration of a prison's unique need for security, safety, and other penological concerns is needed. *Miller v. King,* 384 F.3d 1248, 1266 (11th Cir. 2004).

Courts have found the standard for reviewing an inmate's ADA rights "to be equivalent to the review of constitutional rights in a prison setting, as outlined by the Supreme Court in *Turner v. Safley.*" *Gates v. Rowland,* 39 F.3d 1439, 1447 (9th Cir. 1994). *Turner* instructs that when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89 (1987). Several factors are

considered, including the connection between the regulation and a valid government interest and the impact accommodating the asserted right will have. *Id.*

Applying these criteria to the facts *sub judice* reveals the Sheriff's evaluation and denial of personal devices is valid. First, there is a direct connection between precluding personal devices and the government interest of security. That the interests of correctional safety and security are valid is axiomatic. Second, the impact of accommodating the asserted right vindicates the Sheriff's actions. The ADA is not a suicide pact. Indeed, the Seventh Circuit has noted that "[s]ecurity concerns, safety concerns, and administrative exigencies would all be important considerations" in the reasonable accommodation calculation. *Love v. Westville Corr. Ctr.*, 103 F.3d 558, 561 (7th Cir. 1996).

Precedent demonstrates security is a higher priority than accommodation, best exemplified by *Arreola v. Choudry*, 2007 U.S. Dist. LEXIS 8701 (N.D. Ill. 2007). An inmate with a broken ankle argued a CCDOC policy barring crutches in the general population violated his constitutional rights. The court disagreed. Citing instances in which the Seventh Circuit denied the admission of prescribed medication, it noted, "[d]enial of prescribed medical devices is not materially different." *Id.* at *24. The Seventh Circuit also acknowledged that crutches can be wielded as a weapon and that it was permissible to confiscate them while an inmate was in the general population in *Johnson v. Snyder*, 444 F.3d 579, 582 (7th Cir. 2006). The First Circuit held a facility did not violate the ADA when it denied an inmate a cane for security reasons in *Kiman v. N.H. Dep't. of Corr.*, 451 F.3d 274, 285-86 (1st Cir. 2006). *See also* 28 C.F.R. § 35.130(b)(7) (public entities are not required to make modifications to their policies when they would "fundamentally alter the nature of the service").

The above authority demonstrates that security is paramount when considering the admission of removable wheelchair parts, grab bars, shower chairs, and height adapters. That items as innocuous as crutches and canes have been deemed too dangerous for the correctional context suggest that the personal devices sought by Plaintiffs were properly denied by the Sheriff.

Deference to correctional administrators also undermines Plaintiffs' argument. When matters of internal prison security are at issue, "courts should not substitute their judgment for that of prison administrators." *Turner,* 482 U.S. at 89. Barring the desired modifications is directly related to jail security. Plaintiffs are prohibited from using personal devices in order to protect themselves, other detainees, and correctional officers. The Sheriff has concluded that forbidding items that could be transformed into weapons fosters correctional security. This determination should be respected, as in *Baribeau v. City of Minneapolis*, 578 F.Supp.2d 1201 (D. Minn. 2008). An inmate sued under the ADA after officers confiscated his prosthetic leg. The court found security justified the jail's action, citing the "discretion of prison officials." *Id.* at 1222. The logic of *Baribeau* applies here.

D. Plaintiffs were not denied access to the electronic monitoring program.

Plaintiffs further allege they were denied access to the electronic monitoring program. (SOF 1 ¶ 9). This assertion is thwarted by class representative Kevin House's participation in the exact same program. (SOF 57). Plaintiffs apparently believe each class member is entitled to participate in each service offered. This view defies the realities of correctional life.

Participation in the electronic monitoring program is contingent on numerous factors. These factors include underlying charges and criminal history, none of which are related to accessibility. That House was permitted into the program eviscerates Plaintiffs' claim. James Grant claims he was not allowed into to program because he was handicapped. But the real reason was his criminal history. Grant had a gun charge and drug possession, as well as a domestic violence offense. All of these charges prohibited him from entering the program. (SOF 30).

E. Plaintiffs were not denied access to drug rehabilitation.

RTU and Cermak are both medical units designed to provide medical needs for detainees with special needs. The medical staff makes a determination as to a detainee's drug addiction and need for drug rehabilitation. This decision is based on the history the detainee provides at the intake

process, as well as the observation of medical personnel and request of detainees. Derrick Phipps was in a medical unit the entire time he was a detainee at CCDOC. This is the opportune place to receive drug rehabilitation. Upon his intake into CCDOC, Phipps did not list as a medical condition a drug dependency, nor has any grievance been filed regarding the denial of drug rehabilitation. (SOF 9).

F. Summation.

Defendants have not engaged in discrimination. The issues raised in the Complaint do not relate to a cognizable claim under Title II. If there was a program or service which disabled inmates were barred access to, Plaintiffs would have a case. But no such evidence is offered. Instead, Plaintiffs' case rests on an amalgam of disparate conceptions. Title II demands more.

CONCLUSION

A complaint does not exist in a factual vacuum, it must state a legally viable cause of action. This suit fails that basic premise. Defendants have provided a myriad of reasons why this case cannot go forward. The Court need only agree with one.

WHEREFORE, the Defendant, Sheriff of Cook County, respectfully requests this Honorable Court grant his Motion for Summary Judgment and any other relief the Court deems just.

Respectfully submitted,
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