

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONT HEARD, et al.,

Plaintiffs,

v.

Case No. 1:13-CV-373

TOM FINCO, et al.,

HON. GORDON J. QUIST

Defendants.

**ORDER GRANTING PLAINTIFFS' MOTION
FOR RECONSIDERATION**

Plaintiffs request that the Court reconsider that portion of its March 31, 2014 Memorandum Order Adopting in Part and Rejecting in Part Report and Recommendation (dkt. # 59) dismissing their Eighth Amendment claim. To prevail on a motion for reconsideration, the movant must "not only demonstrate a palpable defect by which the Court and the parties have been misled, but [must] also show that a different disposition of the case must result from a correction thereof." *See* W.D. Mich. LCivR 7.4(a). Having reviewed Plaintiffs' motion, the Court concludes that reconsideration is warranted.

In concluding that Plaintiffs failed to state an Eighth Amendment claim, the Court analogized the circumstances in this case to those presented in *Mobley v. Smith*, No. 4:05-cv-153, 2007 WL 1650934 (W.D. Mich. June 4, 2007). The court in *Mobley* concluded that the plaintiff failed to state an Eighth Amendment claim because the plaintiff was not denied food, but instead elected to eat only some of the food that he was provided because of his religious preferences. *See id.* at *6. Applying *Mobley's* reasoning, this Court concluded that Plaintiffs' Eighth Amendment claims fail because Plaintiffs were denied a nutritionally-adequate diet only because they chose to participate in the Ramadan fast. In other words, Defendants provided Plaintiffs an adequate diet though the regular prison diet, but Plaintiffs chose not to eat it due to their religious practices. (Dkt. # 59 at Page ID#709.)

Plaintiffs contend that *Mobley* is distinguishable from this case because the plaintiff in *Mobley* rejected the nutritionally-adequate food that he was provided, whereas in this case Plaintiffs did not reject the food they were given; instead, Plaintiffs allege that Defendants failed to provide them adequate food as part of the Ramadan menu. The Court agrees. *Mobley* involved different circumstances because the plaintiff in *Mobley* declined to eat some of the food he was given, while in this case, Plaintiffs allege that they were not provided adequate food in the first instance. Assume, for example, that Plaintiffs suffered from a medical condition that required them to have a special medical diet. The availability of the regular prison diet would provide no defense to an Eighth Amendment claim for failing to provide a proper medical diet. *See Byrd v. Wilson*, 701 F.3d 592, 595 (6th Cir. 1983) (per curiam) (recognizing Eighth Amendment liability for failing to provide a prescribed medical diet). Plaintiffs' circumstances are not materially different. Plaintiffs' religious practices require that they refrain from eating and drinking from sunrise to sunset each day during Ramadan. Defendants may not defend an Eighth Amendment claim simply by pointing to the availability of the regular prison diet, because Plaintiffs would have been required to break the Ramadan fast, contrary to their religious practices, in order to eat the regular diet that was served during the day. Thus, just as a prisoner with a medical condition requiring a special diet should not be expected to consume a regular diet, a prisoner should not be expected to violate his religious beliefs or practices in order to obtain nutritionally-adequate food. Moreover, Plaintiffs' allegation that they received only between 1,000 and 1,500 calories per day during the entire 2011 and 2012 Ramadan fasts alleges sufficiently serious deprivations of adequate food for purposes of an Eighth Amendment claim. *Hudson-Bey v. Martin*, No. 1:00-CV-389 (W.D. Mich.) (5/23/02 Order & Partial J., dkt. # 51-1.); *see also Berry v. Brady*, 192 F.3d 504, 507 (5th Cir. 1999) ("The Eighth Amendment requires that inmates be provided well-balanced meals, containing sufficient nutritional value to preserve health.") (internal quotation marks and brackets omitted).

