

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Rodney Fussell, et al., : Case No. 1:03-cv-704
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 Plaintiffs, :
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 vs. :
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 Reginald Wilkinson, et al., :
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 Defendants. :

ORDER

William E. Martin, a class member and an inmate at the Southern Ohio Correctional Facility in Lucasville, filed a pro se motion for various types of relief. (Doc. 195) Martin seeks to intervene as a party in this case, and for appointment of counsel to represent him. He asks the court to grant a hearing on his motion, and order several other inmates to be brought to court to testify. Martin also requests the Court to hold a long list of state officials in contempt for violations of the Consent Decree, to order the release of 25,500 inmates from Ohio prisons, and to award sanctions to Martin for every day he is denied proper medical treatment.

Martin initially alleges, without any cognizable factual support, that Ohio Governor Strickland has "ordered ODRC officials to withhold all medical treatment that is not prescribed by a chronic care clinic." He also accuses Governor Strickland of "micromanaging the ODRC" by allegedly restricting

certain food items, or requiring the correctional facility to serve peanut butter too many times during the week. He complains that inadequate heat and hot water were available for part of the past winter, and that terrorists are given access to better food and facilities than Martin is being provided by ODRC. These several accusations are completely unsubstantiated, and the Court rejects them out of hand.

With regard to Martin's complaints about his medical care: he filed four grievances over the past several months. In the first (No. 09-08), he alleges that he was seen by a physician on September 12, 2008, who refused to renew his medications for Imodium, Nasarel, Naphcon-A, and Hydrocortisone cream. He claims this doctor told him that she was hired specifically to lower medical expenses, causing her to deny him access to these medications. Martin describes various conditions for which these medications were made available to him in the past. He also complains that the physician he saw is an osteopathic doctor who he claims is not a "real doctor."

His second grievance (No. 11-08) complains that he submitted four care requests concerning additional ibuprofen for what he describes as periodic headaches. He contends he has not seen a medical doctor after these requests. He reiterates his complaints about the osteopathic physician, and complains that the facility is understaffed in violation of the consent decree's

requirements.

Martin's third grievance, No. 02-09, reiterates his complaints about headaches. He admits, however, that he was prescribed additional ibuprofen by Dr. Bautista on November 11, 2008 (after he filed his second grievance), but then he claims that Dr. Redden refused to renew it on January 26, 2009. Dr. Redden told him that he might have "cluster headaches" but was not prepared to make that a definitive diagnosis, and instead did "nothing" for him. He also complains that he "probably had a seizure" in mid-February, and insisted that he be allowed to have an MRI. He again saw Dr. Bautista on February 20, and claims the doctor told him she would review his file and renew his medications, but he was then told to leave because Dr. Bautista was struggling with a patient backlog. He asserts he was unable to tell the doctor about his seizure or to ask for an MRI.

Martin's fourth grievance, No. 03-09, reiterates many of these complaints, adding an allegation that he was denied medication by Dr. Redden based on his race, because Dr. Redden prescribed similar medication for an African-American inmate.

Each of Martin's grievances went through the institutional review process, resulting in a final decision of the Chief Inspector. (See Doc. 198, Exhibit 1, at pp. 1, 8, 15, and 24 respectively for each of the grievances.) In each case, the Assistant Chief Inspector Nora Parks denied Martin's complaints

based upon her review of his medical records and by speaking with available personnel involved in his care. Parks notes that during the September 12 exam, the nurse stated that Martin exhibited no symptoms of the problems of which he complains (sinus problems, diarrhea or hemorrhoids). When Martin was hospitalized at OSU, the specialist documented his history of several chronic conditions but did not mention these current complaints. Parks noted that over the counter prophylactics are available from the commissary for these conditions.

Regarding Martin's second grievance and lack of adequate ibuprofen, Parks noted that Martin saw Dr. Bautista on November 11 and was given ibuprofen. Parks also instructed HCA to have the physician review Martin's file to maintain any appropriate medication orders, and to monitor his consumption of ibuprofen given his chronic Hepatitis C. Parks also cautioned Martin about refraining from making derogatory comments about the credentials of medical staff.

In Parks' determination of Martin's third grievance, she noted that Dr. Redden discontinued the ibuprofen in order to rule out rebound headaches, and scheduled Martin for an eight-week followup. Martin complained to a nurse on February 18 about the alleged seizure incident in his cell, and he saw Dr. Bautista only two days later. The notes of that visit state that Martin only wanted medication renewal, and say nothing about the seizure

incident. Martin was also seen for blood pressure checks on February 24 and March 3, at which time he did not complain about this problem. Despite Parks' conclusion that Martin did not discuss the alleged seizure with the doctor on February 20, she instructed HCA to refer Martin for an evaluation of this issue by a physician.

Parks' decision with respect to Martin's fourth grievance notes that Dr. Owen (the osteopath about whom Martin initially complained) is no longer at SOCF. Dr. Redden's examination of January 26, and her prescribed treatment plan, were based on her medical judgment, and Martin's subjective criticism was misplaced. Martin's blood pressure is being taken weekly, and Martin has not complained of problems since a February 20 sick call. Martin's allegations of racial discrimination are completely unfounded, and therefore Parks again rejected his grievance.

Having exhausted his administrative remedies concerning these issues, as the consent decree requires, Martin's pending motion accuses all of the involved state personnel (from Governor Strickland to the physicians and nurses at SOCF) of violating the consent decree by denying him required medical care. His pleadings are laced with unsupported derogatory statements about the motives for and reasoning behind the institutional determinations of his complaints. He states that "no other

inmate" has been charged a co-pay since Governor Strickland "ordered" treatment to be withheld, suggesting this establishes invidious racial discrimination. As noted above, this allegation is rejected out of hand. Despite the fact that Parks' March 5 decision (on grievance No. 02-09) specifically instructs HCA to arrange a physician evaluation concerning his reported seizure, Martin also complains that he will "never" see a doctor unless this Court intervenes. He then admits that since the resolution of his four grievances, his Inderal prescription has been renewed.

Martin's motion to intervene, and for appointment of counsel, is denied. Martin sought to intervene in this action prior to this Court's approval of the consent decree, and he raised similar complaints about medical care then that he raises now. The Court rejected Martin's request to intervene in 2005, finding that the named class representatives fairly and adequately represented the class. While Martin is apparently not personally satisfied with appointed class counsels' representation of his subjective complaints, that is insufficient to justify appointing separate counsel for Martin, especially in view of his unsupported and in some cases outlandish accusations. This Court has no doubt that if there were some factual support for Martin's accusations about Governor Strickland and the reduction in medical care, the federal monitor and/or class

counsel would promptly bring that situation to the attention of the Court. No such concerns have been presented by the monitor or the Medical Oversight Committee.

The Court finds that Martin has not established a violation of the consent decree entered in this case, and is not entitled to the various forms of relief he seeks in his motion. The motion (Doc. 195) is therefore DENIED.

SO ORDERED.

DATED: June 1, 2009

s/Sandra S. Beckwith
Sandra S. Beckwith
Senior United States District Judge