

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BERRELL FREEMAN
Wisconsin Secure Program Facility
1101 Morrison Drive
P.O. Box 1000
Boscobel, WI 53805-0900,

Plaintiff,

v.

Case No. 03-C-0021-C

Receipt of Copy of the within acknowledged
the 30 day of JULY 2004
Time 10:17 AM.
Attorney General Office of Wisconsin
By P.R. CROSSEN

GERALD BERGE, Warden, in his official and individual capacities,
PETER HUIBREGTSE, Deputy Warden, in his individual capacity,
GARY BOUGHTON, Security Director, in his individual capacity
JOHN SHARPE, Unit Manager (former), in his individual capacity,
Wisconsin Secure Program Facility
1101 Morrison Drive
P.O. Box 1000
Boscobel, WI 53805-0900,

BRAD HOMPE, Unit Manager (former), in his individual capacity,
Racine Correctional Institution
2019 Wisconsin St, PO Box 900
Sturtevant, WI 53177-0900,

Defendants.

SECOND AMENDED COMPLAINT

TO: Peggy A. Lautenschlager, Attorney General
Corey F. Finkelmeyer, Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857

Preliminary Statement

This is a civil rights action filed by Berrell Freeman, a state prisoner, for injunctive relief and damages under 42 U.S.C. § 1983, alleging that defendants exposed plaintiff to serious harm to his health through enforcement of a policy that deprived plaintiff of nutritionally adequate food and that, in so doing, defendants violated plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

Plaintiff alleges as follows:

Parties

1. Plaintiff Berrell Freeman is an adult currently incarcerated at the Wisconsin Secure Program Facility ("WSPF") in Boscobel, Wisconsin. Plaintiff has been in the custody of the Wisconsin Department of Corrections throughout all events described in this complaint.
2. Defendant Gerald Berge is employed by the Wisconsin Department of Corrections as the warden at the WSPF and has been so employed at all times relevant to this action. He is sued in his individual and official capacities.
3. In addition to serving as Warden at the WSPF, defendant Berge is also employed by the Wisconsin Department of Corrections as the warden at the Prairie du Chien Correctional Institution and has been so employed since July 2003.
4. Warden Berge spends approximately half of his time at the WSPF.

5. Defendant Peter Huibregtse is employed by the Wisconsin Department of Corrections as the deputy warden at the WSPF and has been so employed since at least April 2002.

6. Defendant Gary Boughton is employed by the Wisconsin Department of Corrections as the security director at the WSPF since November 2000.

7. Defendant John Sharpe was employed by the Wisconsin Department of Corrections as a unit manager at the WSPF until at least sometime in 2002. Upon information and belief, Mr. Sharpe is presently employed as a captain at the WSPF and has been so employed since leaving his position as unit manager.

8. Defendant Brad Hompe was employed by the Wisconsin Department of Corrections as a unit manager at the WSPF at all times relevant to this action. Upon information and belief, Mr. Hompe is presently employed as the Deputy Warden at the Racine Correctional Institution.

Jurisdiction and Venue

9. This court has jurisdiction over the claims in this action under 28 U.S.C. §§ 1331 and 1343.

10. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2).

Factual Background

11. The WSPF has a policy requiring that, in order to receive meals, inmates must put on pants, turn on their cell light, and stand in the middle of their cell in full view of officers.

12. The policy does not have a safety purpose, but rather is purportedly intended to prevent inmates from exposing themselves to officers.

13. If an inmate fails to follow this procedure, the inmate may or may not be given a meal and, per the meal delivery policy, the inmate may be considered to have "refused" his meal.

14. An inmate that does not completely comply with the policy is sometimes given a meal anyway, depending upon the officers involved with serving the meal.

15. The Canteen section of the Level Program Handbook includes no requirement that inmates have trousers or shorts on and stand in the middle of their cells with the cell lights on in order to receive canteen items.

16. Except during delivery of meals and medicine, inmates are not required to turn on their lights, put pants on, and stand in the middle of their cell in order to receive anything.

17. For example, officers deliver inmates legal loan materials and canteen items without requiring inmates to turn on the cell light, put their pants on, or stand in the middle of the cell.

18. Officers are able to turn on cell lights by use of a switch on the outside of the cell.

19. Defendant Berge is responsible for the administration and operation of the WSPF and is familiar with the security policies in place there.

20. Upon information and belief, defendant Huibregtse takes over the responsibilities of the warden when Warden Berge is not at the WSPF.

21. Upon information and belief, defendant Huibregtse also supervises the unit managers and serves as the reviewing authority for inmate complaints.

22. Security Director Boughton is responsible for the WSPF's policies and procedures for security. He also signs off on incident reports and conduct reports.

23. Unit Manager Hompe was, upon information and belief, responsible for Unit Delta, the staff working on that unit, and the inmates on that unit, including Mr. Freeman, during times relevant to this action.

24. Unit Manager Sharpe was, upon information and belief, responsible for Unit Foxtrot, the staff working on that unit, and the inmates on that unit, including Mr. Freeman, during times relevant to this action.

25. Officers have denied plaintiff meals on the basis that he did not comply with the meal delivery policy. Under the meal distribution policy, an inmate's noncompliance with the meal distribution policy may be considered a "refusal."

26. Since 2000, the plaintiff has, on numerous occasions, been deprived of regular and nutritionally adequate meals for continuous periods of time often extending over days.

27. On April 23, 2001, to April 25, 2001, plaintiff was denied all his meals.

28. Between July 6, 2001, and November 3, 2001, plaintiff received only approximately 121 meals and was denied approximately 242 meals.

29. In January 2002, plaintiff was denied all meals for three days.

30. In April 2002, plaintiff was denied all meals for two days.

31. Between June 29, 2002, and July 8, 2002, plaintiff was denied most, if not all, of his meals, including a period of eight consecutive days in which he was denied all meals.

32. In late January 2003, plaintiff was denied at least four meals over a period of four days.

33. In February 2003, plaintiff was denied all meals for at least three consecutive days.

34. In March 2003, plaintiff was denied all meals for at least three consecutive days.

35. From May 18, 2003, to June 5, 2003, plaintiff was denied at least 32 of 57 meals.

36. Plaintiff was denied all meals on September 12-13, 2003, and again was denied most, if not all, meals on September 22-25, 2003.

37. Plaintiff was denied food every day from October 2, 2003, through October 12, 2003, including a period of at least eight consecutive days in which he received no meals.

38. Inmates on Levels 1 and 2 are not allowed to purchase any food items available from the canteen.

39. Even if inmates are allowed to buy food from the canteen, they are limited to five food items.

40. Most of the food items available from the canteen are candy or snack foods such as chips.

41. Warden Berge holds weekly multidisciplinary "Special Needs" meetings during which various officials come together to report on and discuss problems with specific inmates.

42. The Warden and/or the Deputy Warden attend(s) the Special Needs meetings.
43. Security Director Boughton attends the Special Needs meetings.
44. Representatives of health services and clinical services attend the Special Needs meetings.
45. Unit managers attend the Special Needs meetings.
46. An inmate missing numerous meals would typically be something discussed at the Special Needs meetings.
47. Warden Berge does not recall there ever being a discussion at a Special Needs meeting about Mr. Freeman missing meals.
48. Security Director Boughton does not recall there ever being a discussion at a Special Needs meeting about Mr. Freeman missing meals.
49. Dr. Gary Maier, the psychiatrist at WSPF, does not recall there ever being a discussion at a Special Needs meeting about Mr. Freeman missing meals.
50. Under Procedure 524.06 in the Security Policies and Procedures Manual in effect at the WSPF since October 10, 2000,

In the event an inmate denies a meal, refuses staff directives to obtain a meal, or fails to consume the meal provided, a notation shall be made in the Unit multi-purpose log book and the following is to be followed:

A. Day 2

1. After two consecutive days of an inmate not eating, the Unit Sergeant shall discuss with the inmate why he is not eating.

B. Day 3

1. After three consecutive days of not eating, the Unit Sergeant shall complete an incident report and verbally inform HSU, Clinical staff and the Unit Manager. This contact and all information available is to be documented in the Unit log book and on the incident report.
2. HSU staff shall evaluate the inmate. The evaluation may occur on the Unit or in HSU. HSU will continue to monitor the inmate on a daily basis.
3. Unit staff will continue to monitor the inmate's behavior.

C. Day 4 and after

1. The Unit Sergeant will review the daily meal log and write an Incident Report for each inmate that is continuing to deny/refuse meals.

This procedure also states that "[r]efusal to comply with staff directives to receive a meal shall be documented in the Unit behavioral log."

51. When plaintiff missed meals, he was not monitored by the health services staff any more often than usual.

52. The Department of Corrections has a form titled "Not Eating or Drinking Information" that it provides to inmates. It states:

Not eating food or drinking fluids may cause short term or long term illness up to and including death.

Not eating or drinking anything may cause death in just a few days.

Drinking fluids and not eating is less dangerous, but can lead to serious illness if continued for days.

Body reactions to starving include: loss of body fluids, dizziness, lightheadedness, weakness, nausea, vomiting, tiredness, sluggishness, irritability, weight loss, low blood sugar, slow heart rate and low blood pressure.

Starving can result in heart damage, kidney damage, and death. Depending on the length of starvation, damage to the heart and kidneys may be permanent.

53. Inmates on Levels 1 and 2 are not allowed to order food items from the canteen.

54. Plaintiff has suffered from depression, sleep disturbances, acid reflux, ulceration, nausea, chest pain, muscle pain, and frequent headaches. He has received medication for these conditions. He sometimes has trouble breathing. In addition, plaintiff's vision has deteriorated since being incarcerated at the WSPF. He is often forgetful and confused. He has been placed on clinical observation for attempting suicide and for smearing blood, feces and urine all over his cell.

55. On February 12, 2003, Judge Barbara B. Crabb entered an order granting plaintiff leave to proceed on his deprivation of food claim.

56. In an order filed June 4, 2003, Judge Crabb allowed plaintiff's case relating to his food deprivation claims to go forward after finding that plaintiff had exhausted all administrative remedies.

57. Defendants were aware of conditions that created a serious risk of harm to plaintiff's health, conditions that were easily preventable, yet they remained deliberately indifferent to this risk.

58. As a result of defendants' denial of meals and use of food as punishment, plaintiff has suffered great mental and physical distress.

Claim for Relief

59. The defendants' enforcement of a policy that creates serious harm to plaintiff's health by repeatedly denying him meals constitutes deliberate indifference to plaintiff's basic nutritional needs in violation of the Eighth Amendment to the United States Constitution and 42 U.S.C. § 1983.

Relief Requested

WHEREFORE, the plaintiff requests that the court grant the following relief:

- A. Issue a declaratory judgment stating that defendants' enforcement of a policy that deprived plaintiff of repeated meals over periods of days as a form punishment violated the plaintiff's rights under the Eighth Amendment to the United States Constitution; and
- B. Issue an injunction requiring that defendants not use the deprivation of food as a punishment; and
- C. Award compensatory damages against defendants for the physical and emotional injury resulting from the defendants' deliberate indifference to plaintiff's nutritional needs; and
- D. Award punitive damages against defendants; and
- E. Award plaintiff his attorney's fees and costs; and

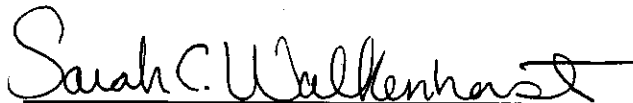
F. Grant such other and further relief as this Court may deem just and equitable.

Jury Demand

The plaintiff demands a trial by jury.

Dated this 8th day of July, 2004.

Respectfully submitted



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