UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CARL BARRETT,

Plaintiff,

v. **Case No. 20-CV-1128**

ARMOR CORRECTIONAL HEALTH INC.,
MERCY MAHAGA,
MAHEDA GONE,
LT. TOWNES,
MAJOR EVANS,
DEPUTY MONTOYS,
DEPUTY VELEZ, and
DEPUTY MCCOY,

Defendants.

SCREENING ORDER

Plaintiff Carl Barrett, an inmate confined at Green Bay Correctional Institution, filed a *pro se* complaint under 42 U.S.C. § 1983. The Prison Litigation Reform Act (PLRA) applies to this case because he was incarcerated when he filed his complaint. The PLRA requires courts to screen complaints filed by prisoners to identify cognizable claims. 28 U.S.C. § 1915A. On August 31, 2020, the court screened Barrett's complaint and allowed him to proceed against defendants Mercy Mahaga and Maheda Gone based on allegations that they were deliberately indifferent to his serious medical condition while he was incarcerated at the Milwaukee County Jail. (ECF No. 7.) A couple of weeks later, Barrett filed an amended complaint (ECF No. 9), and about a month after that he filed a second amended complaint (ECF No. 10).

Under Federal Rule of Civil Procedure 15, a plaintiff may file an amended complaint once without the court's permission. The court has not yet screened the amended complaint, so the court will screen the second amended complaint. If Barrett decides to amend his complaint again, he will have to comply with Civil L.R. 15, which requires plaintiffs to file a motion detailing the differences between the operative complaint (that is, Barrett's second amended complaint) and the proposed amended complaint. The court reminds Barrett that leave to amend will be granted only in the absence of "undue delay, bad faith or dilatory motive . . ., repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . ., [and] futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

1. Screening the Second Amended Complaint

1.1 Federal Screening Standard

To state a claim under the federal notice pleading standard a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To state a claim under 42 U.S.C. § 1983 a plaintiff must allege that someone deprived him of a right secured by the Constitution or the laws of the United States and that whoever deprived him of this right was acting under color of state law. *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)).

1.2 Barrett's Allegations

Barrett alleges that in the spring of 2016 he was shot multiple times in his jaw, shoulder, and right-hand pinky finger. He explains that bullets remained lodged in his jaw and shoulder, his arm was placed in a sling, and a rod was placed in his finger. He was prescribed gabapentin for pain management. Barrett was taken into custody and confined at Milwaukee Secure Detention Facility. The doctor there continued his gabapentin prescription for pain.

Shortly thereafter, in May or June of 2016, Barrett was transferred to Milwaukee County Jail. He says his pain medication was canceled without him seeing a doctor pursuant to defendant Armor Correctional Health Care's policy that only Tylenol may be prescribed for pain associated with gunshot wounds. Barrett states that he was in a lot of pain and eventually was seen by defendants Mercy Mahaga and Maheda Gone, both of whom, pursuant to Armor's policy, refused to give him anything stronger than Tylenol despite him repeatedly telling them Tylenol was not working. Barrett says they also refused to properly treat his injuries, which led to infections and even more pain. He asserts they saw him many times but never gave him anything to treat the infection, despite the wound dripping green fluid and pus. Barrett states that his finger was eventually amputated.

Barrett alleges that in July 2016 he was suffering excruciating pain from his injuries and asked defendants Montoys, Velez, Townes, McCoy, and Evans to contact health services, but they refused. Velez and Townes allegedly placed Barrett in

segregation because he would not stop complaining about his medical problems. While in segregation, Barrett was fed seg-loaf.

Barrett also alleges that, after the weather turned colder, he asked Mahaga for an extra blanket because the cold made his injuries hurt more. She refused to give him one, telling him that Armor does not allow extra blankets to be given to inmates.

1.3 Analysis

Barrett explains that he was a pretrial detainee during the relevant events. Accordingly, his claims regarding the conditions of his confinement—including allegedly inadequate medical care—arise under the Fourteenth Amendment. *Williams v. Ortiz*, 937 F.3d 936, 942-43 (7th Cir. 2019). To state a claim under the Fourteenth Amendment, he must allege that (1) he suffered from an objectively serious medical condition and (2) prison staff's response to his condition was objectively unreasonable. *Id.*

The court will allow Barrett to proceed against Mahaga and Gone based on his allegations that they failed to address his severe pain and that their treatment of his finger, which was eventually amputated, was constitutionally inadequate. He may also proceed against Townes, Evans, Montoys, Velez, and McCoy based on his allegations that they refused to contact health services despite his requests for help and his complaints of severe pain. He also states a claim against Armor Correctional Health based on his allegations that it has a policy of providing medication that is inadequate to address inmates' complaints of severe pain.

Finally, Barrett states a claim against Velez and Townes under the First Amendment based on his allegations that they retaliated against him for complaining about his medical condition by placing him in segregation. *See Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009).

Barrett's allegations that he was denied an extra blanket despite his complaints that the cold aggravated his injuries is not actionable. Barrett does not allege facts from which the court can reasonably infer that the temperature in his cell was so extreme that refusing to provide an extra blanket was objectively unreasonable. *See, e.g., Dixon v. Godinez*, 114 F.3d 640, 642 (7th Cir. 1997). And, while prison officials are obligated to respond to prisoners' complaints of severe pain, the Constitution does not empower prisoners to dictate *how* prison officials respond. *See Holloway v. Delaware County Sheriff*, 700 F.3d 1063, 1073 (7th Cir. 2012).

Nor is Barrett's allegation that he was forced to eat seg-loaf actionable. It appears that, as a result of being placed in segregation, he was given seg-loaf in place of his regular meal tray. Barrett explains that seg-loaf is when an entire meal is ground up into a loaf and served cold. Barrett asserts that it tastes horrible with a cold-grease taste. The Constitution requires prison staff to provide for prisoners' basic human needs, including food. *See Hardeman v. Curran*, 933 F.3d 816, 825 (7th Cir. 2019). According to Barrett, the prison provided him food—albeit in a form that he found unappetizing. The mere fact that Barrett did not like the food provided to him is not enough to state a constitutional claim. *See, e.g., Northington v. Payne*, No. 12-cv-396, 2012 WL 4832264, at *2-3 (N.D. Ind. Oct. 9, 2012) (holding that plaintiff did

not state a claim merely because she was ordered to be fed only nutraloaf, which is similar to seg-loaf).

2. Conclusion

THEREFORE, IT IS ORDERED that Barrett's second amended complaint is the operative complaint.

Under an informal service agreement between Milwaukee County and this court, a copy of the second amended complaint (ECF No. 10) and this order have been electronically transmitted to Milwaukee County for service on defendants Lt. Townes, Major Evans, Deputy Montoys, Deputy Velez, and Deputy McCoy. It is **ORDERED** that, under the informal service agreement, those defendants shall file a pleading responsive to the second amended complaint within 60 days.

IT IS FURTHER ORDERED that the U.S. Marshals Service shall serve a copy of the second amended complaint (ECF No. 10) and this order upon defendants Mercy Mahaga, Maheda Gone, and Armor Correctional Health Inc. pursuant to Federal Rule of Civil Procedure 4. Barrett is advised that Congress requires the U.S. Marshals Service to charge for making or attempting such service. 28 U.S.C. § 1921(a). Although Congress requires the court to order service by the U.S. Marshals Service, it has not made any provision for these fees to be waived either by the court or by the U.S. Marshals Service. The current fee for waiver-of-service packages is $8.00 per item mailed. The full fee schedule is provided at 28 C.F.R. §§ 0.114(a)(2), (a)(3). The U.S. Marshals Service will give Barrett information on how to remit payment. The court is not involved in collection of the fee.

IT IS FURTHER ORDERED that defendants Mahaga, Gone, and Armor Correctional Health shall file a responsive pleading to the second amended complaint.

IT IS FURTHER ORDERED that the parties may not begin discovery until after the court enters a scheduling order setting deadlines for discovery and dispositive motions.

Dated in Milwaukee, Wisconsin, this 29th day of October, 2020.

BY THE COURT:

WILLIAM E. DUFFIN
U.S. Magistrate Judge