

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**FRANCISCO LOPEZ,
Plaintiff,**

v.

Case No. 24-C-1436

**CORRECTIONAL OFFICER HORNE,
Defendant.**

SCREENING ORDER

Plaintiff Francisco Lopez, who is confined at the Milwaukee County Jail, filed a pro se complaint under 42 U.S.C. § 1983 alleging that defendant violated his constitutional rights. This order resolves plaintiff's motion for leave to proceed without prepaying the filing fee, screens his complaint, and resolves his motion to appoint counsel.

I. MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYING THE FILING FEE

The Prison Litigation Reform Act (PLRA) applies to this case because plaintiff was a prisoner when he filed his complaint. See 28 U.S.C. § 1915(h). The PLRA allows the court to give a prisoner plaintiff the ability to proceed with his case without prepaying the civil case filing fee. 28 U.S.C. § 1915(a)(2). When funds exist, the prisoner must pay an initial partial filing fee. 28 U.S.C. § 1915(b)(1). He must then pay the balance of the \$350 filing fee over time, through deductions from his prisoner account. *Id.*

On November 26, 2024, I ordered plaintiff to pay an initial partial filing fee of \$41.00. ECF No. 8. Plaintiff paid that fee on December 23, 2024. I will grant plaintiff's motion for leave to proceed without prepaying the filing fee. He must pay the remainder of the filing fee over time in the manner explained at the end of this order.

II. SCREENING THE COMPLAINT

A. Federal Screening Standard

Under the PLRA, I must screen complaints brought by prisoners seeking relief from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). I must dismiss a complaint if the prisoner raises claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

In determining whether the complaint states a claim, I apply the same standard that applies to dismissals under Federal Rule of Civil Procedure 12(b)(6). See *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017) (citing *Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 899 (7th Cir. 2012)). To state a claim, 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). The complaint must contain enough facts, accepted as true, to “state a claim for relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

To state a claim for relief 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 the 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)). I construe *pro se* complaints liberally and hold them to a less stringent standard than pleadings drafted by lawyers. *Cesal*, 851 F.3d at 720 (citing *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015)).

B. Plaintiff's Allegations

Plaintiff alleges that on October 12, 2024, around 2:00 – 2:40 a.m., he had severe chest pains and told defendant Horne that he needed to see a nurse, but defendant Horne ignored him. Plaintiff then used the emergency intercom to try to get some help. He told “an unidentified officer (John Doe)” that he needed emergency medical treatment and that the pain was making it hard for him to breathe. ECF No. 1 at 2. Officer Doe told plaintiff he had sleep apnea and that he should lay down and go to sleep. The pain increased which made it hard to move. Moments later, defendant Horne returned to plaintiff's cell with two blankets and said plaintiff had sleep apnea and that he should lay down and go to sleep. Defendant Horne passed plaintiff's cell numerous times but did not check on plaintiff because he “believed” nothing was wrong with plaintiff. *Id.* at 3.

When the first shift officer arrived, she noticed plaintiff looked terrible and saw that he had tried to call a medical emergency. The first shift officer informed her supervisor and a medical nurse who came to plaintiff's cell and then took him to the Froedtert Hospital emergency room where he learned he was having heart failure, and that his lungs were full of water. Plaintiff remained in the hospital for three days because of heart complications.

For relief, plaintiff seeks monetary damages.

C. Analysis

A claim under 42 U.S.C. § 1983 alleging that a pretrial detainee has received inadequate medical care is predicated on the rights secured by the Fourteenth Amendment's Due Process Clause. *James v. Hale*, 959 F.3d 307, 318 (7th Cir. 2020) (citing *Miranda v. County of Lake*, 900 F.3d 335, 346-47 (7th Cir. 2018)). Claims of inadequate medical care while in pretrial detention are subject to an objective reasonableness standard. *Id.* (citing *Miranda*, 900 F.3d at 352). Plaintiff bears the burden to demonstrate objective unreasonableness, and he must make a two-part showing. *Id.* First, he must show that defendants acted purposefully, knowingly or recklessly when considering the consequences of their response to the medical condition at issue in the case. *Id.* (citing *McCann v. Ogle County, Illinois*, 909 F.3d 881, 886 (7th Cir. 2018)). Second, plaintiff must show that the challenged conduct was objectively unreasonable given the totality of the relevant facts and circumstances. *Id.*

Plaintiff may proceed on a medical care claim against defendant Horne based on his allegations that Horne ignored his requests for emergency medical attention. While plaintiff states that Horne "believed" nothing was wrong with plaintiff, it appears that plaintiff questions whether defendant Horne genuinely believed that.

Plaintiff also alleges that when he made an emergency call from his cell, the John Doe officer who picked up the phone told him he had sleep apnea and that he should go to sleep. Plaintiff did not name a Doe defendant in the caption of the complaint. However, under the circumstances, the court will direct the clerk's office to add defendant John Doe to the complaint caption and allow plaintiff to proceed on a medical care claim based on Doe's response to plaintiff's request for emergency medical assistance. After defendant

Horne answers the complaint and the court issues a scheduling order, plaintiff may use discovery to identify the Doe defendant.

III. PLAINTIFF'S MOTION TO APPOINT COUNSEL

Plaintiff has filed a motion to appoint counsel. He states that he is having medical issues with his heart which cause stress and make it difficult for him to think properly. In a civil case, the court has discretion to recruit a lawyer for individuals who cannot afford to hire one. *Navejar v. Iyola*, 718 F.3d 692, 696 (7th Cir. 2013); 28 U.S.C. §1915(e)(1); *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866-67 (7th Cir. 2013). “[D]eciding whether to recruit counsel ‘is a difficult decision: Almost everyone would benefit from having a lawyer, but there are too many indigent litigants and too few lawyers willing and able to volunteer for these cases.’” *Henderson v. Ghosh*, 755 F.3d 559, 564 (7th Cir. 2014) (quoting *Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014)).

In exercising its discretion, the court must consider two things: “(1) ‘has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so,’ and (2) ‘given the difficulty of the case, does the plaintiff appear competent to litigate it himself?’” *Eagan v. Dempsey*, 987 F.3d 667, 682 (7th Cir. 2021) (quoting *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007)). And, given the scarcity of *pro bono* counsel resources, the court may also consider the merits of a plaintiff’s claim and what is at stake. *Watts v. Kidman*, 42 F.4th 755, 763-64 (7th Cir. 2022).

To satisfy the first prong, the court must determine that a plaintiff made a good faith effort to hire counsel. *Pickett v. Chicago Transit Authority*, 930 F.3d 869, 871 (7th Cir. 2019). “This is a mandatory, threshold inquiry that must be determined before moving to the second inquiry.” *Eagan*, 987 F.3d at 682. To demonstrate he satisfied the first

prong, plaintiff must show he contacted at least three lawyers and provide the court with (1) the lawyers' names; (2) their addresses; (3) how and when the plaintiff attempted to contact the lawyer; and (4) the lawyers' responses.

"The second inquiry requires consideration of both the factual and legal complexity of the plaintiff's claims and the competence of the plaintiff to litigate those claims." *Eagan*, 987 F.3d at 682. When considering the second prong, the court "must examine the difficulty of litigating specific claims and the plaintiff's individual competence to litigate those claims without counsel." *Pennewell v. Parish*, 923 F.3d 486, 490 (7th Cir. 2019). The court looks at "whether the difficulty of the case, factually, legally, and practically, exceeds the litigant's capacity as a layperson to coherently litigate the case." *Id.* This includes "all tasks that normally attend litigation," such as "evidence gathering, preparing and responding to court filings and motions, navigating discovery, and putting on a trial." *Id.* at 490-491. The court "must consider the plaintiff's literacy, communication skills, education level, litigation experience, intellectual capacity, psychological history, physical limitations and any other characteristics that may limit the plaintiff's ability to litigate the case." *Id.* at 491. In situations where plaintiff files his motion in the early stages of the case, the court may determine that it is "impossible to tell whether [the plaintiff] could represent himself adequately." *Pickett*, 930 F.3d at 871.

Plaintiff has not satisfied the first requirement for appointment of counsel because he does not state that he has made a reasonable attempt to find a lawyer on his own. On this basis alone, the court must deny plaintiff's motion. Even if plaintiff had made a reasonable attempt to find a lawyer, the court does not believe he would need one at this time. Plaintiff states that the stress he is under from his heart condition will prevent him

from being able to litigate. However, there are not currently any deadlines for plaintiff in the case. Defendant Horne has sixty days to file a responsive pleading to the complaint. After he does that, the court will issue a scheduling order setting case deadlines and providing the parties with information about the next steps in the case. If plaintiff needs more time to identify the Doe defendant, conduct discovery, or respond to a motion for summary judgment, he may file a motion for extension of time. Plaintiff should be sure to file any motion for extension of time before the deadline he is seeking to extend.

IV. CONCLUSION

For the reasons stated, **IT IS ORDERED** that plaintiff's motion for leave to proceed without prepaying the filing fee (ECF No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's motion to appoint counsel (ECF No. 10) is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the clerk's office add defendant Officer John Doe to the case caption.

Under an informal service agreement between Milwaukee County and this court, a copy of the complaint and this order have been electronically transmitted to Milwaukee County for service on defendant Correctional Officer Horne. It is **ORDERED** that, under the informal service agreement, defendant Horne shall file a responsive pleading to the complaint within 60 days.

IT IS FURTHER ORDERED that the agency having custody of plaintiff shall collect from plaintiff's prison trust account the \$309.00 balance of the filing fee **by collecting payments from plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the account in any month in which either (1)**

the balance in the account exceeds \$10 or (2) the income credited to the account in the preceding month exceeded \$10. The collected payments shall be sent to the clerk of court. The payments shall be clearly identified by the case name and number assigned to this case. If plaintiff is transferred to another county, state, or federal institution, the transferring institution shall forward a copy of this Order along with his remaining balance to the receiving institution.

IT IS FURTHER ORDERED that a copy of this order be sent Office of the Sheriff, Fiscal Operations Rm 224, 821 W. State Street, Milwaukee, WI 53233.

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.

IT IS FURTHER ORDERED that plaintiffs who are incarcerated at Prisoner E-Filing Program institutions¹ must submit all correspondence and case filings to institution staff, who will scan and e-mail documents to the court. Plaintiffs who are incarcerated at all other prison facilities must submit the original document for each filing to the court to the following address:

Office of the Clerk
United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

¹ The Prisoner E-Filing Program is mandatory for all prisoners of Green Bay Correctional Institution, Waupun Correctional Institution, Dodge Correctional Institution, Wisconsin Secure Program Facility, Columbia Correctional Institution, and Oshkosh Correctional Institution.

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE JUDGE'S CHAMBERS. It will only delay the processing of the matter.

Plaintiff is further advised that failure to make a timely submission may result in the dismissal of this case for failure to diligently pursue it. In addition, the parties must notify the Clerk of Court of any change of address. Plaintiff is reminded that it is his responsibility to promptly notify the court if he is released from custody or transferred to a different institution. Plaintiff's failure to keep the court advised of his whereabouts may result in the dismissal of this case without further notice.

Enclosed is a guide prepared by court staff to address common questions that arise in cases filed by prisoners. Entitled "Answers to Prisoner Litigants' Common Questions," this guide contains information that plaintiff may find useful in prosecuting his case.

Dated at Milwaukee, Wisconsin, this 1st day of April, 2025.

/s/ Lynn Adelman
LYNN ADELMAN
United States District Judge