

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

Civil Action No. _____

(To be supplied by the court)

MAR - 3 2005

GREGORY C. LANGHAM
CLERK

William Erickson,

_____, Plaintiff,

v.

Barry J. Pardus, Assist. Clinical Dir., C.D.O.C.,

Dr. Anita Bloor, L.C.F. Medical Staff,

(All defendant's named in their individual and official capacities).

RECEIVED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 24 2005

GREGORY C. LANGHAM
CLERK

_____, Defendant(s).

(List each named defendant on a separate line.)

PRISONER COMPLAINT

A. PARTIES

1. William Erickson, #59295, Limon Correctional Facility, 49030 St. Hwy. 71,
(Plaintiff's name, prisoner identification number, and complete mailing address)
Limon, CO. 80826

2. Barry J. PARDUS, Assistant Director of Clinical Services, Colorado Dept.
(Name, title, and address of first defendant)
of Corrections, 2862 South Circle Drive, Colorado Springs, CO. 80906

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes No (CHECK ONE). Briefly explain your answer:

Mr. PARDUS is the Assistant Director of Clinical Services for the Colo. Dept. of Corrections. As such, he is vested with the authority to Act under the color of State law. See § 17-1-103 C.R.S.. Mr. PARDUS is responsible for enactment of the new C.D.O.C. policy which excessively charges C.D.O.C. inmates fees for medical visits.

3. Dr. Anita Bloor, L.C.F. Clinical Director, 49030 St. Hwy. 71, Limon, CO. 80826
(Name, title, and address of second defendant)

Dr. Bloor is also granted authority to act under the color of State law. See

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes No (CHECK ONE). Briefly explain your answer:

§ 17-1-103 C.R.S. Dr. Bloor had me removed from my hepatitis C treatment for a class II C.O.P.D. conviction that is not listed in the C.D.O.C. treatment protocol for treatment of this disease, thus endangering my life and violating my procedural due process protections.

4.
(Name, title, and address of third defendant)

At the time the claim(s) alleged in this complaint arose, was this defendant acting under color of state law? Yes No (CHECK ONE). Briefly explain your answer:

(If you are suing more than three defendants, use extra paper to provide the information requested above for each additional defendant. The information about additional defendants should be labeled "A. PARTIES.")

B. JURISDICTION

1. I assert jurisdiction over my civil rights claim(s) pursuant to: (check one if applicable)

XX 28 U.S.C. § 1343 and 42 U.S.C. § 1983 (state prisoners)

 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (federal prisoners)

2. I assert jurisdiction pursuant to the following additional or alternative statutes (if any):

N/A

C. NATURE OF THE CASE

BRIEFLY state the background of your case. If more space is needed to describe the nature of the case, use extra paper to complete this section. The additional allegations regarding the nature of the case should be labeled "C. NATURE OF THE CASE."

The nature of this case involves two separate Eighth Amendment claims and one Fourteenth Amendment claim. The first of these claims involves me being removed from the Hepatitis C treatment I had begun, because a syringe came up missing from L.C.F. medical on the day myself and several other inmates received our weekly pegylated interferon shot. In a nutshell, I was diagnosed as needing treatment for Hepatitis C. I completed the required classes, etc., had a liver biopsy, and was assessed as needing treatment. I started treatment and shortly after beginning treatment, (which would require 1 year), a syringe came up missing at medical following the Friday afternoons shots for those on treatment. The pod I lived in was shaken down the same day (within 20 minutes of the discovery), and a syringe was found in the trashcan. This syringe was cut-down and could not have possibly been the syringe that was missing from medical as there would not have been time to have facilitated this type of conversion. Nevertheless, I was taken to segregation and written up. I was also removed from the treatment immediately. My arguments are simple: 1) that Dr. Bloor (who removed me from treatment), is being deliberately indifferent to my serious medical needs in violation of my Eighth Amendment protections; and 2) that the C.D.O.C. protocol for treatment of Hepatitis C does not allow for me to be removed for the reason I was removed and hence my Fourteenth Amendment procedural due process protections have been violated.

The second claim involves C.D.O.C.'s enactment of a medical policy which requires co-pays (\$5.00 to see the nurse and \$10.00 dollars to see the doctor, \$5.00 per visit to the dentist and \$5.00 per visit to mental health), for medical visits. I contend that the co-pays are excessive and violate my Eighth Amendment protections against cruel and unusual punishment as the visits cost more than I make in a month and C.D.O.C. takes these deductions first forcing me to choose between hygienic needs and medical treatment.

D. CAUSE OF ACTION

State concisely every claim that you wish to assert in this action. For each claim, specify the right that allegedly has been violated and state all supporting facts that you consider important, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific cases to support your claim(s). If additional space is needed to describe any claim or to assert more than three claims, use extra paper to continue that claim or to assert the additional claim(s). The additional pages regarding the cause of action should be labeled "D. CAUSE OF ACTION."

1. Claim One: Violation of Eighth Amendment protections against cruel and unusual punishment, i.e., deliberate indifference to my serious medical need.

Supporting Facts:

- 1) Pursuant to current Colorado Dept. of Corrections (CDOC), treatment protocols, I was assessed as needing treatment for the disease Hepatitis C, I currently suffer from. As a result, I signed a contract with L.C.F. medical officials where I completed the requisite treatment protocol requirements, such as one year of classes, a liver biopsy (which indicated that I was at the required stages for treatment, etc. As a result, I was placed on treatment. Treatment entailed me receiving medication in the form of pills (3 capsules of Ribavirin twice a day), and a shot of Pegylated Interferon, once a week. I received my medications and shot the same time as all other inmates on treatment in the facility. At the time I was on treatment there were about 5 of us receiving the medications.
- 2) One Friday afternoon when all of us receiving treatment were at L.C.F. medical, a syringe came up missing. The syringe was one which was used to give us the pegylated interferon shots. As a result, the unit I live in was shook down, and in my living pod, in a communal trashcan, a syringe was discovered. This syringe was not the same type as used in giving the Pegylated Interferon shots, and it had been altered. Due to this discovery, I was immediately removed from the Hepatitis C treatment, even though the pod I lived in housed 52 men, the syringe was not the type used in giving the Interferon shots, the syringe had been altered (and it would have been physically impossible for anyone to do this within 20 minutes of discovery that the syringe was missing); and the CDOC treatment protocol does not allow for removal from treatment for this type of infraction.
- 3) Dr. Anita Bloor is the one who removed me from the treatment and hence she is personally involved in being deliberately indifferent to my serious medical need. I am still in need of treatment for this disease and CDOC will not treat me, even though I meet the requisite treatment criteria. As such, I contend that Dr. Anita Bloor has violated my Eighth Amendment protections against cruel and unusual punishment by refusing me treatment for a disease I suffer from, i.e., through denying me constitutionally mandated medical care.

Violation of Fourteenth Amendment procedural due process protections
2. Claim Two: through refusing to treat me even though the CDOC protocol mandates

I be treated.

Supporting Facts:

- 1) Once again I state that Dr. Anita Bloor had me removed from the Hepatitis C treatment because a syringe was discovered in my living unit pod. See Claim One. It is my contention that a procedural due process protection was created by CDOC in implementation of the treatment protocol that requires I be treated for Hepatitis C, so long as I meet the pre-requisites of the protocol. See Exhibit A. In addition, I was removed from the treatment for no good reason and against what the treatment protocol/contract states I may be removed for. See Exhibit A. I thus contend that Dr. Anita Bloor has violated my procedural due process protections by removing me from treatment for my Hepatitis C.

Violation of Eighth Amendment protections against cruel and
3. Claim Three: unusual punishment through enactment of an excessive co-pay policy.

Supporting Facts:

- 1) On July 26, 2004, Defendant Pardus enacted a new CDOC policy which implements co-pay charges for all inmates. These charges are \$5.00 dollars to see a nurse practitioner or physician's assistant and \$10.00 dollars to see a doctor. In addition, if an inmate declares an emergency, he/she will be charged \$10.00 for the emergency visit unless it is declared a true emergency, then the co-pay is dropped to \$5.00 dollars.
- 2) My only source of income comes from my CDOC job. As of July 1, 2003, this worker's pay was reduced to .60¢ a day. I am not paid for holidays, days the institution is on lockdown, days I am sick, or any other day I do not work for whatever the reason. Moreover, this pay, approximately \$10.00 a month, is subject to a 20% deduction for court ordered restitution/costs that were entered on my judgment and sentence under § 16-18.5-106 C.R.S. This means I actually receive about \$8.00 a month in total inmate pay. Of this \$8.00 a month, .23¢ a day is given to all inmates as CDOC's obligation to fulfill constitutionally mandated hygienic supplies, etc., for indigent inmates. CDOC does not provide indigent supplies and instead chooses to give each inmate .23¢ a day in order to allow them to purchase the supplies they need from the inmate canteen. This amounts to about \$4.75 a month for those non-working inmates or to each inmate. As a result, I receive approximately \$3.00 a month for working, of which they want me to pay \$5.00 to see a nurse and \$10.00 to see a doctor.
- 3) I contend that this violates my constitutional protections against cruel and unusual punishment, as CDOC does not distinguish any amount of funds on my account as being indigent and if I visit a doctor or see the dentist, etc., they take their co-pay first leaving me nothing to purchase hygiene supplies. Moreover, I contend that the co-pay is excessive in nature.
- 4) Defendant Pardus enacted this new co-pay policy and as a result is personally involved/responsible.

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? xx Yes ___ No (CHECK ONE). If your answer is "Yes," complete this section of the form. If you have filed more than one lawsuit in the past, use extra paper to provide the necessary information for each additional lawsuit. The information about additional lawsuits should be labeled "E. PREVIOUS LAWSUITS."

1. Name(s) of defendant(s) in prior lawsuit:

Barry J. Pardus Ast. Dir. Clinical Services.
Dr. Anita Bloor, & Anthony A. DeCesaro

2. Docket number and court name:

U.S. District Court of Colo.
Civ. Action No. 04-ES-2376

3. Claims raised in prior lawsuit:

Same as in this suit.

4. Disposition of prior lawsuit (for example, is the prior lawsuit still pending? Was it dismissed?):

Dismissed without prejudice.

5. If the prior lawsuit was dismissed, when was it dismissed and why?

I failed to timely respond to a court order, which I stated I never received. I cannot

6. Result(s) of any appeal in the prior lawsuit:

control delivery of the mail in this facility or in this country. Mail goes missing all the time.

N/A

F. ADMINISTRATIVE RELIEF

1. Is there a formal grievance procedure at the institution in which you are confined?

xx Yes ___ No (CHECK ONE).

2. Have you exhausted the available administrative remedies? Attach copies, if available.

xx Yes ___ No (CHECK ONE). Briefly explain your answer:

See attached grievances.

G. REQUEST FOR RELIEF

State the relief you are requesting. If you need more space to complete this section, use extra paper. The additional requests for relief should be labeled "G. REQUEST FOR RELIEF."

Declarative Relief: I seek an Order declaring that my Eighth and Fourteenth Amendment rights have been violated.

Injunctive Relief: I seek a permanent injunction requiring CDOC to cease from taking the excessive co-pays and a temporary injunction requiring CDOC to treat me for Hepatitis C under the standards of the treatment protocol established by them.

Compensatory Damages: I seek reimbursement for all costs of this action, to include filing fees, postage costs, copying costs, attorney fees, etc.

Nominal Damages: I seek nominal damages of \$1.00 from each Defendant.

Punitive Damages: I seek punitive damages in an amount equal to all co-pays collected by CDOC to date and a requirement that CDOC return all co-pays to each inmate where possible.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed on

2-22-05
(Date)

William Erickson 59295
(Prisoner's Original Signature)

William Erickson, #59295
Limon Correctional Facility
49030 State Highway 71
Limon, CO. 80826