

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000738-MR

LEON FAISON

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER CRITTENDEN, JUDGE
ACTION NO. 97-CI-001039

DOUG SAPP, COMMISSIONER;
WILLIAM SEABOLD, WARDEN; AND
DEPARTMENT OF CORRECTIONS

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: DYCHE, GUIDUGLI AND McANULTY, JUDGES.

GUIDUGLI, JUDGE. Three inmates filed a declaratory judgment action in the Franklin Circuit Court challenging the constitutionality of the Department of Corrections' policy of requiring inmates to pay a portion of medical and dental care costs during incarceration. Franklin Circuit Court dismissed the inmates' action. Only one of the inmates, Leon Faison ("Faison"), appeals. Upon reviewing the record and briefs filed by the parties, we hereby affirm.

On November 30, 1995, the Department of Corrections implemented a co-pay system for medical and dental care for

inmates. Specifically, Chapter 13 of the Department of Corrections Policy and Procedure ("CPP") provides that:

An inmate shall be charged \$2.00 for each visit to regularly scheduled sick call unless the inmate is indigent as defined in CPP 15.7. An inmate shall not be charged for ongoing sick call services, for example blood test for diabetes, blood pressure checks for hypertensive individuals or other follow-up services as directed by the medical staff.

CPP 13.2VI.B.a.6. Apparently Chapter 13.9 regulates payment for dental services and dentures. However, this section is not included in the record.

On January 30, 1997, Faison was examined by the Kentucky State Reformatory Institutional Dentist, and was advised that he was a "good candidate" for lower dentures. He claims that the institutional dentist told him that the dentures would prevent him from having difficulty in chewing food thereby relieving him from digestion problems. However, Faison does not include any medical records or an affidavit from the dentist describing whether the dentures were medically necessary to correct a serious health problem. The dentist informed Faison that he would have to pay a fee of \$72.00 for the dentures. Faison claims that he is unable and unwilling to pay for the dentures. Faison also attacks the constitutionality of the \$2.00 co-pay for sick call services.

Faison claims that requiring inmates to pay for medical and dental services violates constitutional principles. Specifically, he alleges that Section 254 of the Kentucky Constitution as well as the Eighth Amendment of the United States Constitution is violated by the above procedures. We disagree.

The United States Supreme court has rejected strict scrutiny as the correct standard of review for the constitutionality of prison regulations. Reynolds v. Wagner, 128 F.3d 166, 172 (3rd Cir. 1997) (citing Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987)). The appropriate standard instead is whether the regulation is reasonably related to a legitimate state interest. Id.

The specific standard in determining violations of the Eighth Amendment is the two-pronged test set forth in Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251 (1976). This standard requires a showing (1) that the prison officials were deliberately indifferent to the inmates' medical needs and (2) that those needs were serious. Id. "Deliberate indifference in violation of the Eighth Amendment's proscription against cruel and unusual punishment exists when a prison official knows that an inmate faces a substantial risk of serious harm to an inmate's health and fails to take reasonable measures to abate the risk." Gardner v. Wilson, 959 F.Supp. 1224, 1228 (C.D. Cal. 1997) (citing Farmer v. Brennan, 511 U.S. 825, 826-29, 114 S.Ct. 1970, 1974, 128 L.Ed.2d 811 (1994)). Although the Eighth Amendment forbids cruel and unusual punishment, "it does not require the most intelligent, progressive, humane, or efficacious prison administration." Hudgins v. DeBruyn, 922 F.Supp. 144, 150 (S.D. Ind. 1996) (quoting Oliver v. Deen, 77 F.3d 156, 161 (7th Cir. 1996)).

While no courts in Kentucky have dealt with this topic, several other jurisdictions have. See e.g., Reynolds v. Wagner,

128 F.3d 166, 173 (3rd. Cir. 1977); Gardner v. Wilson, 959 F.Supp. 1224 (D.C. Cal. 1997); Hudgins v. DeBruyn, 922 F.Supp. 144 (S.D. Ind. 1996); and Johnson v. Dept. Of Public Safety and Correctional Services, 885 F.Supp. 817 (D. Md. 1995). Courts ruling on the matter have found that requiring a prisoner to pay for medical and dental care does not amount to "deliberate indifference to serious medical needs." See e.g., Mourning v. Correctional Medical, 300 N.J. Super., 62 A.2d 529 (1997); Gardner v. Wilson, 959 F.Supp. 1224, 1228 (C.D. Cal. 1997); Hutchinson v. Belt, 957 F.Supp. 97, 100 (W.D. La. 1996); Robinson v. Fauver, 932 F.Supp. 639 (D.N.J. 1996); Bihms v. Klevenhagen, 928 F.Supp. 717, 718 (S.D. Tex. 1996); Hudgins v. DeBruyn, 922 F.Supp. 144 (S.D. Ind. 1996); Johnson v. Dept. of Public Safety and Correctional Services, 885 F.Supp. 817, 820 (D. Md. 1995).

In order to establish deliberate indifference of a serious medical need, Faison must show that requiring inmates to pay a portion of the fee for medical and dental services constitutes a "unnecessary and wanton infliction of pain contrary to contemporary standards of decency." Id. (quoting Helling v. McKinney, 509 U.S. 25, 32, 113 S.Ct. 2475, 2480, 125 L.Ed.2d 22 (1993)). We do not find that the policy at issue rises to that level. "Instead, such a requirement simply represents an insistence that the prisoner bear a personal expense that he or she can meet and would be required to meet in the outside world." Reynolds, 128 F.3d at 174. Furthermore, mechanisms are in place in the regulations to ensure adequate care for all inmates. For example, under the program at issue, an exception is made for

indigent inmates. CPP 13.2 VI.B.3.6. ("An inmate shall be charged \$2.00 for each visit to regularly-scheduled sick call unless the inmate is indigent as defined in CPP 15.7"). Additionally, inmates are not charged for ongoing sick call services, for example blood tests for diabetes, blood pressure checks for hypertensive individuals or other follow-up services as directed by the medical staff. Moreover, Faison does not allege and the record does not support that he has ever been turned away or refused treatment for failure to pay the \$2.00 co-payment. Although Faison was denied dentures unless he paid the \$72.00 fee for them, he presents no documentation of a serious health need requiring the dentures beyond his own assertion that the dentures would "prevent [him] from having difficulty in chewing food, which would in turn relieve [him] from digestion problems that he was experiencing." On its face, denial of the dentures free of charge does not amount to "unnecessary and wanton infliction of pain contrary to contemporary standards of decency."

Nonetheless, Faison asks this Court to stretch the protections in the Eighth Amendment to regulations that simply attempt to provide inmates with a small disincentive to abuse sick call. This goal falls within the area of a legitimate state interest passing constitutional muster. Thus, we can find no violation of the Eighth Amendment.

Furthermore, we find that Faison's claims of violations of Section 254 of the Kentucky Constitution requiring that the Commonwealth "provide for all supplies" of inmates is violated by

the Department of Corrections procedures is without merit. Faison presents no authority for his expansive reading of the provision. We agree with appellees that this phrase is meant to impose a basic obligation of support and maintenance of inmates, not an absolute right to free medical and dental services. For the reasons stated, we find no constitutional violation in requiring inmates to pay a portion of their medical and dental services.

For the foregoing reasons, the judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

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