

Matter of Tafari v Adams
2012 NY Slip Op 30893(U)
March 30, 2012
Supreme Court, Franklin County
Docket Number: 2011-555
Judge: S. Peter Feldstein
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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN

X

In the Matter of the Application of
INJAH TAFARI, #89-A-4807,
Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION AND JUDGMENT

RJI #16-1-2011-0250.50

INDEX # 2011-555

ORI #NY016015J

-against-

RICHARD ADAMS, Physician II,
Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Injah Tafari, verified on June 2, 2011 and filed in the Franklin County Clerk's office on June 6, 2011. Petitioner, who is an inmate at the Upstate Correctional Facility, is challenging the adequacy of medical care he is receiving at Upstate. More specifically, petitioner is challenging the discontinuance of treatment with respect to eight enumerated medical conditions. The Court issued an Order to Show Cause on June 15, 2011 and has received and reviewed respondent's Answer, verified on October 13, 2011, as well as petitioner's Reply Memorandum of Law, dated October 24, 2011 and filed in the Franklin County Clerk's office on November 15, 2011. The Court has also received and reviewed petitioner's Addendum Reply Memorandum of Law, dated March 26, 2012 and filed in the Franklin County Clerk's office on March 28, 2012

Petitioner asserts that he "... has eight medical needs of treatment which has [sic] been prescribed outside specialists, and given by [DOCCS] facility physicians for the past six plus years." These alleged medical needs/treatments are broadly described in paragraph eight of the petition as follows:

"(a) Medical Diet: Vegetarian diet;

- (b) Dental: Soft toothbrush, Colgate toothpaste with baking soda, and oral antiseptic mouth wash;
- (c) Eyes: Light tinted glasses inside, dark tinted glasses outside;
- (d) Left Shoulder: Physical therapy for room [sic] of motion and strength, Tramdal/Ultram 100 mg 3x with follow-up with Orthopedist Surgeon; and front cuff only no over head movement;
- (e) Left Thumb: Hard brace for daily hours, soft brace for sleeping with second pillow for elevation;
- (f) Lower Back: Elastic back brace for day hours, double mattresses for sleeping with Flexeril 10 mg 3x;
- (g) Bowenoid Papulosis: Daily showers with Dove soap, Dove or Head & Shoulders shampoo, clippers to keep groin shaven daily, jock strap, cotton mattresses/pillows, multi vitamin daily, and Vitamin E Capsulor [sic] daily; and
- (h) Feet and Hands
[Raynaurds Disease]: To be worn all year around Thermal (top, bottom, and socks), Gore Tex boots, and insulated sneakers for exercise.”

Petitioner goes on to assert that all of the above-enumerated treatments for his medical needs were discontinued by the respondent, without a physical examination of petitioner, on December 9, 2010 and February 10, 2011. Notwithstanding the above-alleged dates of treatment discontinuance, petitioner filed inmate grievance complaints, which in part challenged the discontinuance of medical treatment, on November 19, 2010 (UST-44433-10) and January 25, 2011 (consolidated with UST-45094-11).

In Grievance UST-44433-10 petitioner requested, in part, the following:

“ . . . [P]rovide me with the treatment that I had when I walked in Upstate Prison on 3/31/10 which Dr. Evelyn Weissman continued that is: (1) Colgate toothpaste w/baken [sic] soda and soft toothbrush and oral antiseptic mouth wash; (2) vegetarian high fiber diet; (3) front cuff order,

Ultram . . .and physical therapy; (4) hard thumb brace for daytime, soft thumb brace for sleeping with second pillow, (5) double mattresses for sleeping, Flexeril . . .and elastic back brace; (6) light tinted glasses for inside, dark tinted glasses for outside with artificial tear drops daily; (7) daily showers w/Dove or Head & Shoulders shampoo, Dove soap, jock strap, cotton mattresses and pillow, clippers to keep groin shaven, multi-vitamins daily and Vitamin E Capsulor [sic] daily; (8) Gore Tex boots w/thermals top bottom & socks, and sneakers; and (9) A & D Ointment . . . daily for scalp & lips, Vitamin E lotion daily for body, and Eucerin Cream daily for hands and feet . . .”

By decision dated December 17, 2010 the facility superintendent denied petitioner’s grievance, stating that petitioner was interviewed by the Acting Superintendent regarding his grievance complaint and “ . . . did not state any additional information and offered no witnesses.” The grievance denial determination further stated, in relevant part, that “[t]he Nurse Administer states that there currently is no medical indication currently for lotions, creams, thumb brace, double mattress/pillow, back brace, boots, thermal underwear, special toothpaste, mouthwash, toothbrush, vegetarian diet, front cuff order, ultram, physical therapy, braces, flexeril, dark tinted glasses or daily showers.” By Decision dated February 23, 2011 the Inmate Grievance Program Central Office Review Committee (CORC) upheld the determination of the superintendent for the reasons stated by the superintendent. In its decision the CORC stated, in relevant part, “ . . . that there is no medical indication for lotions, creams, thumb brace, double mattress or pillow, back brace, thermal underwear, special toothpaste, mouthwash, front cuff order, physical therapy, dark tinted glasses, daily showers, Ultram or Flexeril. CORC advises the grievant to address further medical concerns to staff via sick call . . .”

In consolidated grievance UST-45094-11 petitioner requested that a medical vegetarian high fiber diet be restored and that he be “ . . .referred to an Orthopedist for my lt. shoulder, lt. thumb and lower [back?] or renew all treatments, that Im [sic] referred to an Optometrist for my eyes or renew all treatments, and that Im referred to a Podiatrist

for my feet or renew all treatments . . .” (Emphasis in original). Petitioner also requested as part of consolidated Grievance 45094-11 that he be provided with “(a) vegetarian high fiber diet; (b) light tinted glasses for inside and dark tinted glasses for outside; and (c) gore tex boots . . .”

By Decision dated February 18, 2011 the facility superintendent effectively denied petitioner’s consolidated grievance as follows:

“This grievance was reinvestigated by Acting N.A.[presumably, Nurse Administrator], K. Rabideau and completed by chart review.

Investigation reflects that grievant’s issues listed in this grievance have been addresses numerous times. The NYS DOCS makes no provision for a vegetarian diet. Grievant was examined by the FHSD [presumably, Facility Health Services Director], E. Weissmann on 06/18/09 for request of Gortex boots. M.D. found no medical need for Gortex boots. Grievant was last seen by his primary provider on 02/10/11 to address all his medical issues. He was prescribed Tylenol as needed for pain control. No medical need was found by his provider to warrant the use of Ultram or wrist braces.

Grievant has been evaluated by Optometry on several occasions the latest being 05/03/10. Optometrist documentation reflects that grievant is not photophobic and does not require dark tinted lenses therefore, he does not need 2 pairs of glasses.

Action Requested - Investigation was conducted per Directive #4040. There is no evidence found to substantiate any malfeasance by medical staff. Grievant will not be issued a vegetarian diet, Gortex Boots, Ultram, dark tinted glasses, two pairs of glasses, or wrist splints. He is receiving appropriate medical care for his issues.”

By Decision dated May 11, 2011 the CORC upheld the determination of the facility superintendent in consolidated grievance UST-45094-11 for the reasons stated by the superintendent. The May 11, 2011 CORC decision noted as follows:

“CORC asserts that there is no vegetarian diet provided by DOCCS, and that there is no medical indication for the grievant to be provided with Gortex boots or tinted eyeglasses. Further, CORC notes that the grievant may request OTC pain medication as needed, and that he was seen by his primary care provider on 2/10/11 and 4/28/11. It is noted that he has not

been referred for additional specialty care appointments at this time. CORC asserts that the grievant receives appropriate medical care as indicated.

CORC asserts that, consistent with Health Services Policy Manual Item #1.43 - Specialty Care Referrals, the Facility Health Services Director (FHSD) have the sole responsibility for providing treatment to the inmates under their care.”

There is no doubt that “deliberate indifference to serious medical needs of prisoners” constitutes a violation of the Eighth Amendment proscription against the infliction of cruel and unusual punishment. *Estelle v. Gamble*, 429 US 97 at 104. *See Shomo v. Zon*, 35 AD3d 1227. “. . . [T]he deliberate indifference standard embodies both an objective and a subjective prong. Objectively, the alleged deprivation must be ‘sufficiently serious,’ in the sense that ‘a condition of urgency, one that may produce death, degeneration, or extreme pain’ exists. Subjectively, the charged official must act with a sufficiently culpable state of mind . . . [T]he subjective element of deliberate indifference ‘entails something more than mere negligence . . . [but] something less than acts or admissions for the very purpose of causing harm or with knowledge that harm will result.’ The subjective element requires a state of mind that is the equivalent of criminal recklessness; namely, that the prison official ‘knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.’” *Hathaway v. Coughlin*, 99 F3d 550 at 553, *cert den sub nom, Foote v. Hathaway*, 513 US 1154 (citations omitted). The inadvertent failure to provide proper medical care or negligence in the diagnosis and/or treatment by a prison physician or other medical personnel are insufficient to support an eighth amendment claim. *See Davis v. Goord*, 7 AD3d 889 and *Bryant v. Brunelle*, 284 AD2d 936.

To prevail on a challenge to the final results of a grievance proceeding an inmate “ . . . must carry the heavy burden of demonstrating that the determination by CORC was irrational or arbitrary and capricious.” *Frejomil v. Fischer*, 68 AD3d 1371, 1372 (citations omitted). *See Williams v. Goord*, 41 AD3d 1118, *lv den* 9 NY3d 812. In the case at bar, the Court finds that petitioner has failed to carry this burden.

Other than petitioner’s bald assertions, there is nothing in the record to indicate that the discontinuance of his medical treatments was the product of retaliatory motivation on the part of Upstate medical staff. Petitioner’s grievances were adequately investigated and, notwithstanding petitioner’s assertions, the results of such investigation(s) adequately support the CORC determination(s) that the discontinuation of petitioner’s medical treatments were based, in effect, upon the ongoing assessment of petitioner’s current medical needs. Accordingly, the Court concludes that there is no basis to find that the final CORC decisions with respect to grievance UST-44433-10 and/or combined grievance UST-45094-11 were irrational or arbitrary and capricious.

In reaching this conclusion the Court notes the inherent limitation of the inmate grievance process (7 NYCRR Part 701) in resolving contested factual issues. The above-referenced regulatory scheme does not provide for any quasi-judicial evidential hearings. As stated in 7 NYCRR §701.1(b), the inmate grievance program “ . . . is not intended to support an adversary process, but to promote mediation and conflict reduction in the resolution of grievances.”

Based upon all of the above, it is, therefore the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

Dated: March 30, 2012 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice