

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

HUBERT E. PARKER, : C.A. No. 01M-12-007
Petitioner, :
v. :
DEPARTMENT OF CORRECTION :
C.M.S. (CORRECTIONAL :
MEDICAL SERVICES), :
Respondents. :

O R D E R

1) WHEREAS, on December 11, 2001, Hubert E. Parker ("petitioner") filed a petition seeking a writ of mandamus ("petition") instructing respondents to provide him with medical care/treatment for his hepatitis "C", and alleges therein that respondents are not providing him with any medical care/treatment for his illness;¹

2) WHEREAS, on January 3, 2002, petitioner filed a motion to proceed in forma pauperis, and on February 19, 2002, submitted all of the statutorily required information in support of that motion;

3) WHEREAS, the Department of Correction has a duty to provide petitioner with adequate, reasonable medical care/treatment. 11 Del. C. § 6536(a); Berry v. C.M.S., Del. Super., C.A. No. 92C-12-170, Babiarez, J. (April 26, 1994); Brown v. John Doe (Water Company), Del. Ch., C.A. No. 12908, Allen, C. (June 10, 1993). See

¹Petitioner filed other requests for relief which will not be addressed at this time.

Lynch v. Brewington-Carr, 704 A.2d 844 (Del. 1997) (petitioner not entitled to a writ of mandamus where he failed to establish that the Department of Correction breached its duty to provide adequate medical care);

4) WHEREAS, petitioner is indigent;

5) WHEREAS, at this stage of the proceedings, the petition is not legally or factually frivolous;²

NOW, THEREFORE, THIS ___18th_____ DAY OF MARCH, 2002, IT IS HEREBY ORDERED as follows:

- 1) The motion to proceed in forma pauperis is granted;³ and
- 2) The action is allowed to proceed.

JUDGE

cc: State v. Parker, Def. ID#s 9812020293,
9903018902, 9902013946

²However, if the facts as developed establish that petitioner has received treatment, but petitioner's complaint is that it is not the treatment which he desires, then the petition will be dismissed with prejudice and petitioner will lose good time credits pursuant to 10 Del. C. § 8805.

³The granting of the motion to proceed in forma pauperis does not relieve petitioner of following the Superior Court Civil Rules. In particular, petitioner must obtain service of process.