

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION

MICHAEL DEWAYNE HASTINGS,
ADC #110772

PLAINTIFF

v.

2:09CV00186JLH/JTK

LARRY NORRIS, et al.

DEFENDANTS

ORDER

Pending before the Court is a motion to dismiss filed by defendants Yarbrough, Holloway, Powell, Norman, Edwards, Grigsby, Loe and Granger (“medical defendants”) (Doc. No. 14). In support of the motion, defendants state plaintiff’s allegations against them should be dismissed because he failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e. In support, defendants state plaintiff admitted not pursuing the next step of the grievance process because he was unable to obtain a response, referring to plaintiff’s complaint at page 12.

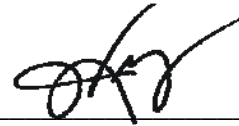
In his response to defendants’ motion (Doc. No. 38), plaintiff states he filed all his grievances to the second step but could not receive a response. He also attaches a response to one of his grievances, EAM 10-00028, dated February 2, 2010, which states the grievance was found with merit. This grievance appears to have been a follow-up grievance to earlier grievances filed and referred to by the plaintiff.

At this point, the Court is unclear about what grievances plaintiff filed with respect to his claims against the medical defendants, and what responses he received from them. Therefore, pursuant to Fed.R.Civ.P. 12(d), the Court will construe defendants’ motion as one for summary judgment, and will request that the parties present to the Court copies of all grievances relating to the issue raised against defendants. The parties also may present any additional evidence, such as affidavits. Accordingly,

IT IS, THEREFORE, ORDERED that defendants' motion to dismiss (Doc. No. 14) hereafter will be construed by the Court as a motion for summary judgment.

IT IS FURTHER ORDERED that the parties shall file additional evidence in support of their respective positions, including copies of all grievances and responses to such, and relevant affidavits, within ten days of the date of this Order.

IT IS SO ORDERED this 20th day of May, 2010.



UNITED STATES MAGISTRATE JUDGE