

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

FROILAN REYES
ADC #155527

PLAINTIFF

v. No. 4:17-cv-762-DPM-PSH

DAVID B. WARNER, MD, UAMS; and
SHARYN RHODER, APN, North Central Unit

DEFENDANTS

ORDER

1. On *de novo* review, the Court adopts Magistrate Judge Harris's thorough partial recommendation, *No 111*, and overrules Reyes's objections, *No 112*. FED. R. CIV. P. 72(b)(3). The Court understands Reyes's frustration and the difficulty the language barrier created in exhausting his claims. But the law on exhaustion is strict; and there is no "special circumstances" exception to the exhaustion requirement. *Ross v. Blake*, 136 S. Ct. 1850, 1862 (2016).

2. Dr. Warner's motion for summary judgment, *No 100*, is granted. Reyes's claims against him are dismissed without prejudice. Rohder's motion for summary judgment, *No 97*, is partly granted and partly denied. Reyes's claim that Rohder wouldn't refer him to an optometrist goes forward. His remaining claims against Rohder are dismissed without prejudice.

3. Reyes's embedded motion for appointed counsel, *No 112*, is denied without prejudice. As Magistrate Judge Harris has previously

noted, neither the facts nor the claims are complex enough to warrant appointed counsel at this stage. *No 6 & No 24; Plummer v. Grimes*, 87 F.3d 1032, 1033 (8th Cir. 1996). But if any claims proceed to trial, then the Court will appoint counsel to assist Reyes at that point.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

16 August 2019