

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

JOHN MICHAEL BOWDEN,
ADC #129677

PLAINTIFF

v.

5:11-cv-00250-JLH-JTK

CORIZON, INC., et al.

DEFENDANTS

ORDER

This matter is before the Court on Plaintiff's Motion for a Physical Examination (Doc. No. 69). Defendants filed a Response in opposition to the Motion (Doc. No. 77).

In support of his Motion, Plaintiff states an independent medical examination is necessary for him to prove that Defendants have acted with deliberate indifference in failing to treat his rectal abscess. Plaintiff cites to FED.R.CIV.P. 35 as providing for appointment of an independent physical examination.

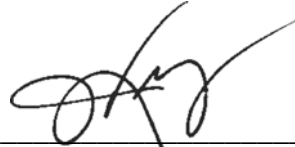
Defendants object to Plaintiff's request, stating that although the Court granted Plaintiff in forma pauperis status in this action pursuant to 28 U.S.C. § 1915(d), that statute does not authorize payment for the requested medical examination. Defendants also provide copies of Plaintiff's most recent medical records to show that his condition is healing well and he was released from his surgeon's care. (Doc. No. 77-1.)

Initially, the Court notes that FED.R.CIV.P. 35 does not apply to support Plaintiff's request, because it deals with cases where one party asks to have another party examined, after the **latter** party has placed his physical or mental state in issue. Instead, that Rule would apply if Defendants were to request that Plaintiff be examined, based on Plaintiff's allegations of inadequate medical care and treatment. In addition, Defendants are correct that the Court is not required to pay for an independent medical examination, and Plaintiff does not identify a statutory basis which would

require the Court or the Defendants to fund an expert's examination and report. See Hayles v. Jarriel, No. 6:10-cv-31, 2010 WL 5069870 (S.D.Ga. 2010), and Wilkerson v. United States, Civil No. 4:CV-07-2228, 2009 WL 1045865 (M.D.Pa. 2009). Accordingly,

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Physical Examination (Doc. No. 69) is DENIED.

IT IS SO ORDERED this 30th day of January, 2012.



JEROME T. KEARNEY
UNITED STATES MAGISTRATE JUDGE