

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEONARD A. HASKIN,)	No. C 08-2226 CW (PR)
)	
Plaintiff,)	ORDER DISMISSING WITHOUT
)	PREJUDICE ALL CLAIMS AGAINST
v.)	DEFENDANT CAPOZOLI; AND GRANTING
)	REMAINING DEFENDANTS' MOTION TO
ROBERT AYERS, JR., et al.,)	DISMISS
)	
Defendants.)	(Docket no. 32)
_____)	

INTRODUCTION

Plaintiff Leonard A. Haskin¹ filed this pro se civil rights action under 42 U.S.C. § 1983 on July 28, 2008, when he was a state prisoner incarcerated at San Quentin State Prison (SQSP).

In an Order dated December 31, 2009, the Court found cognizable Plaintiff's Eighth Amendment claim of deliberate indifference to serious medical needs against the following SQSP Defendants: Warden Robert Ayers, Jr.; Chief Physician Dr. Williams; Physicians Dr. Martin, Dr. Wilson, Dr. Bui and Dr. Udenyi; Neurologists Dr. Capozoli and Dr. Mendius; Urologist Dr. Gershbein; Sergeant Nguyen; and Correctional Officer Perry.

On March 23, 2010, Defendants Ayers, Bui, Gershbein, Martin, Nguyen, Perry, Udenyi, Williams and Wilson (Defendants) moved to dismiss Plaintiff's deliberate indifference claim for failure to exhaust administrative remedies.² Inmate Appeals Branch Chief D.

¹ Plaintiff's last name was previously incorrectly spelled as "Haskins." The correct spelling is "Haskin."

² Defendants Mendius and Capozoli were never served in this action; therefore, they have not joined the other Defendants in the present motion. On January 25, 2011, the Court dismissed without prejudice Plaintiff's claims against Defendant Mendius under Federal Rule of Civil Procedure 4(m). Meanwhile, in an Order dated March 1, 2011, the Court directed Plaintiff to provide a current address for Defendant Capozoli within fourteen days. The fourteen-day deadline has passed, and Plaintiff has not

1 Foston and Deputy Attorney General C. Young submitted declarations
2 in support of Defendants' motion to dismiss. Plaintiff filed
3 three letters -- on August 13, 2010, October 7, 2010 and January
4 3, 2011 -- in response to Defendants' motion to dismiss.³
5 Defendants filed a reply to Plaintiff's letters.

6 On February 1, 2011, the Court directed Defendants to produce
7 supporting documents relevant to 602 inmate appeal log no.
8 07-00209. On February 8, 2011, Defendants responded to the
9 Court's February 1, 2011 Order. SQSP Appeals Coordinator L. Rojas
10 submitted another declaration in support of Defendants' motion to
11 dismiss. On March 1, 2011, Plaintiff filed a reply to Defendants'
12 response.

13 For the reasons discussed below, the Court GRANTS Defendants'
14 motion to dismiss.

15 BACKGROUND

16 Plaintiff alleges that Defendants "neglect[ed] to
17 appropriately acknowledge or treat" his serious medical needs on
18

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21 _____
22 responded to the Court's March 1, 2011 Order. Accordingly,
23 Plaintiff's claims against Defendant Capozoli are also DISMISSED
without prejudice under Rule 4(m).

24 ³ In addition to opposing the motion to dismiss, Plaintiff
25 alleges in these letters that his sentence is illegal. (Pl.'s
26 Aug. 13, 2010 Letter at 2 (citing Cunningham v. California, 549
27 U.S. 270 (2007)).) However, contrary to Plaintiff's allegation
28 that this is an "important matter regarding this law suit
involving San Quentin," his sentencing claim need not be addressed
at this time because it is not relevant to his deliberate
indifference claims. Instead, if Plaintiff wishes to pursue this
claim, he should file a separate habeas corpus action after
exhausting his state court remedies.

1 several occasions between 2003 and 2008. (Am. Compl. at 5.⁴) The
2 amended complaint refers to Plaintiff's multiple medical problems;
3 however, for the purposes of analyzing the exhaustion issue, the
4 Court has divided his problems into the following categories:

5 I. Lack of Treatment for Urological Problems

6 Plaintiff alleges that between December 2, 2004 and
7 approximately March 1, 2005, he "complained" to Defendants Wilson
8 and Bui "of urological problems, and neither Dr. ordered any
9 treatment." (Id. at 6.)

10 On December 2, 2004, Plaintiff was examined by Dr. Williams,
11 who indicated that "he would be sending [Plaintiff] to urology,
12 but never followed through with the appointment." (Id. at 7.)

13 On or about April 1, 2005, Defendant Bui ordered antibiotics
14 for Plaintiff's "enlarged prostate [sic];" however, the
15 medication "did not work." (Id. at 6.)

16 On April 22, 2005, Plaintiff saw Defendant Gershbein, who
17 prescribed Plaintiff "seven days of Valium" and informed Plaintiff
18 that his symptoms were "psychosomatic." (Id. at 8.) Plaintiff
19 "continued to complain to H-Unit Doctors until [he was] prescribed
20 Flomax." (Id.)

21 On July 14, 2006, Plaintiff was examined by an SQSP
22 urologist.⁵

24 ⁴ Plaintiff has not numbered his amended complaint. Although
25 he has numbered the pages of the attached exhibits, the pages are
26 not in numerical order. Therefore, the Court has renumbered his
27 amended complaint and exhibits, beginning with page one as the
28 first page of the complaint form.

⁵ After a "minimal case review" during the July 14, 2006
appointment, Plaintiff alleges he was not examined by a urologist
"until approximately December 12, 2008." (Am. Compl. at 9.)

1 On or about September 1, 2007, Plaintiff was examined by SQSP
2 urology specialist Dr. Brown.

3 On October 16, 2007, Plaintiff received prostate surgery.

4 On October 17, 2007, Plaintiff was "discharged . . . with no
5 follow-up treatment or pain medications ordered by Dr. Brown."
6 (Id.)

7 On October 18, 2007, Plaintiff was transported to the Trauma
8 Treatment Area-Emergency Room (TTA) because he was "in severe
9 pain." (Id.) Plaintiff "received pain medication and
10 antibiotics, and a follow-up treatment, which included cleaning
11 [his] exterior catheter."

12 On October 19, 2007, Plaintiff was seen by Defendant Udenyi,
13 who allegedly exclaimed to Plaintiff, "'Oh my God, your catheter
14 was supposed to be removed in 48 hours. Jesus, we're a day late
15 already" (Id.) Defendant Udenyi then directed the
16 registered nurse to send Plaintiff immediately to TTA to remove
17 the catheter. (Id.) Soon after, a TTA doctor removed Plaintiff's
18 catheter.

19 On or about October 21, 2007, Plaintiff "began suffering
20 complications" from his prostate surgery, which he alleges caused
21 "acute pain" in his prostate area, problems with "urinary
22 retention" and "burning" while urinating. (Id. at 11.)

23
24 On November 20, 2007, Plaintiff returned to TTA because he
25 was "in severe pain from said complications." (Id.) He was
26 allegedly "refused said treatment." (Id.)

27
28 However, this is contradicted by the record, which shows that
Plaintiff was examined by urology specialists in September, 2007.

1 On or about December 10, 2007, Defendant Udenyi told
2 Plaintiff that "all of Dr. Brown's treatment orders of November
3 20, 2007 were lost out of [his] medical file." (Id.) Defendant
4 Udenyi then indicated she would "call Dr. Brown, and ask him what
5 treatment he prescribed." (Id.) Defendant Udenyi later
6 prescribed Plaintiff one milligram of Terazosin once daily.
7 Plaintiff alleges that "this dosage did nothing for my pain or
8 systems [sic]." (Id. at 12.) Thereafter, Defendant Udenyi
9 increased Plaintiff's medication dosage.

10 II. Lack of Treatment for Dehydration⁶

11 On December 24, 2006, Plaintiff alleges that at around 7:00
12 p.m. he "began to vomit every 30 minutes." (Id. at 13.) At
13 around 1:00 a.m., Plaintiff approached Defendant Perry and
14 requested "immediate medical treatment," which was denied. (Id.)
15 At around 3:00 a.m., Plaintiff again approached Defendant Perry
16 and requested immediate medical treatment, which was denied.
17 (Id.) At 5:20 a.m., Plaintiff once more approached Defendant
18 Perry, who this time "wrote [him] a pass" to go to TTA. (Id.)
19 Plaintiff alleges the TTA registered nurse informed Plaintiff that
20 if he had "not come in when [he] did, that [he] would have died of
21 dehydration." (Id.)

22 On January 1, 2007, Plaintiff submitted 602 inmate appeal log
23 no. SQ-07-00209, requesting that the December 24, 2006 incident
24 "be immediately put under investigation." (Id. at 44.)

25 On January 2, 2007, Plaintiff also submitted a copy of appeal
26

27 ⁶ Although it is not clearly indicated in the record, the
28 Court assumes that Plaintiff's dehydration was related to his
urological problems.

1 log no. SQ-07-00209 to Chief Medical Officer K. Saylor and Federal
2 Receiver R. Sillen.

3 On January 17, 2007, Plaintiff received notification that
4 appeal log no. SQ-07-00209 had been assigned to a reviewer at the
5 first formal level. (Id. at 61.)

6 On March 6, 2007, Plaintiff wrote a letter indicating that he
7 had not yet received a response from the first formal level of
8 review, which had a due date of February 27, 2009. (Id. at 55.)

9 On March 1, 2007, appeal log no. SQ-07-00209 was "partially
10 granted" at the first formal level of review because an "inquiry
11 into [Plaintiff's] allegation had been conducted." (Rojas Decl.,
12 Ex. A at AGO-09.) Plaintiff then submitted his appeal to the
13 second formal level of review.
14

15 On March 14, 2007, Plaintiff received notification that
16 appeal log no. SQ-07-00209 had been assigned to a reviewer at the
17 second formal level. (Am. Compl. at 62.)

18 The record originally did not contain a copy of the response
19 to his appeal to the second formal level of review or any
20 indication about whether the appeal progressed to the Director's
21 level of review. Therefore, in its February 1, 2011 Order the
22 Court directed Defendants to provide the Court with "any and all
23 relevant supporting documents showing whether there was a second
24 level response to inmate appeal log no. 07-00209, and if so,
25 whether the appeal progressed to the Director's level." (Feb. 1,
26 2011 Order at 2.)

27 Defendants submitted a copy of the response from the second
28 formal level of review, which shows that the reviewer "partially

1 granted" appeal log no. SQ-07-00209 on June 16, 2008. (Rojas
2 Decl., Ex. A at AGO-18.) The reviewer determined that the inquiry
3 into Plaintiff's allegation was "complete," and that staff did not
4 violate California Department of Corrections and Rehabilitation
5 (CDCR) policy. (Id.) In that response, Plaintiff was instructed
6 as follows: "If you wish to appeal the decision, you must submit
7 your staff complaint appeal through all levels of appeal review up
8 to, and including, the Director's Level of Review. Once a
9 decision has been rendered at the Director's Level of Review, your
10 administrative remedies will be considered exhausted." (Id.)

11 In Plaintiff's reply to Defendants' response, he claims that
12 the copy of the second formal level reviewer's response is
13 "absolutely fraudulent." (Pl.'s Reply at 1.) However, the Court
14 finds no evidence to support Plaintiff's allegation. The
15 documents submitted by Defendants, including the second formal
16 level reviewer's response, were attached to a declaration by
17 Appeals Coordinator Rojas, who swore under penalty of perjury that
18 the copy of appeal log no. SQ-07-00209 and the responses to that
19 appeal, attached as "Exhibit A," was a "true and correct copy of
20 the original appeal, the first level review memoranda, and the
21 second level review memorandum." (Rojas Decl. ¶ 4.)

22 Finally, there is nothing in the record that indicates that
23 Plaintiff appealed to the Director's level of review. The Court
24 notes that in his original complaint, filed on a habeas corpus
25 petition form, Plaintiff alleges that appeal log no. SQ-07-00209
26 was "not pursued" to the Director's level of review "because of
27 misdirection" by the "Appeals Coordinator." (Pet. at C-4.)
28

1 III. Lack of Treatment for Spinal Arthritic Disk Degeneration

2 Plaintiff alleges that on October 21, 2003, he learned he had
3 "Chronic Cervical Lumbar Arthritic Degeneration." (Am. Compl. at
4 9.) Plaintiff initially requested treatment for his disorder that
5 day; however, he was informed that he "was beyond physical therapy
6 until August 13, 2006."⁷ (Id.) Plaintiff was referred to
7 University of California, San Francisco Hospital. Plaintiff was
8 then referred to SQSP's "medical physical therapist" for "another
9 probationary period of light traction for Cervical Spine
10 Disorder." (Id.)

11 On or about October 1, 2004, Plaintiff was seen by Defendant
12 Wilson for his Spinal Arthritic Disk Degeneration, during which
13 time Plaintiff told Defendant Wilson "that in addition to the
14 severe pain and loss of feeling in [his] hands and feet," he was
15 experiencing pain in his shoulder. (Id. at 6.) Defendant Wilson
16 referred Plaintiff to a Tele-Ortho Doctor.

17 On April 5, 2007, the "traction probationary period" ended
18 and the physical therapist referred Plaintiff "back to the
19 neurosurgeon." (Id.) From April 5, 2007 until approximately
20 December 17, 2007, Plaintiff alleges he received "no follow-up
21 treatments." (Id.)

22
23 DISCUSSION

24 The Prison Litigation Reform Act of 1995, Pub. L. No. 104-
25 134, 110 Stat. 1321 (1996) (PLRA), amended 42 U.S.C. § 1997e to

26
27 ⁷ Because there is nothing in the record showing that
28 Plaintiff received any physical therapy during this time, the
Court assumes that Plaintiff was informed that such therapy was
unavailable to him until August, 2006.

1 provide that "[n]o action shall be brought with respect to prison
2 conditions under [42 U.S.C. § 1983], or any other Federal law, by
3 a prisoner confined in any jail, prison, or other correctional
4 facility until such administrative remedies as are available are
5 exhausted." 42 U.S.C. § 1997e(a). The PLRA's exhaustion
6 requirement is therefore mandatory, and no longer left to the
7 discretion of the district court. Woodford v. Ngo, 548 U.S. 81,
8 85 (2006) (citing Booth v. Churner, 532 U.S. 731, 739 (2001)).
9 The PLRA's exhaustion requirement requires "proper exhaustion" of
10 administrative remedies. Woodford, 548 U.S. at 93. This means
11 "[p]risoners must now exhaust all 'available' remedies," id. at
12 85, in "compliance with an agency's deadlines and other critical
13 procedural rules." Id. at 90-91. The requirement cannot be
14 satisfied "by filing an untimely or otherwise procedurally
15 defective administrative grievance or appeal." Id. Further, the
16 remedies "available" need not meet federal standards, nor need
17 they be "plain, speedy and effective." Porter v. Nussle, 534 U.S.
18 516, 524 (2002); Booth, 532 U.S. at 739-40 & n.5.

19
20 It is the prison's requirements, and not the PLRA, that
21 define the boundaries of proper exhaustion. Jones v. Bock, 549
22 U.S. 199, 218 (2007). The CDCR provides its inmates and parolees
23 the right to appeal administratively "any departmental decision,
24 action, condition, or policy which they can demonstrate as having
25 an adverse effect upon their welfare." Cal. Code Regs. Tit. 15,
26 § 3084.1(a). The CDCR also provides its inmates the right to file
27 administrative appeals alleging misconduct by correctional
28 officers. See id. § 3084.1(e). In order to exhaust all available

1 administrative remedies within this system, a prisoner must submit
2 his complaint as a 602 inmate appeal and proceed through several
3 levels of appeal: (1) informal level grievance filed directly with
4 any correctional staff member; (2) first formal level appeal filed
5 with one of the institution's appeal coordinators; (3) second
6 formal level appeal filed with the institution head or designee;
7 and (4) third formal level appeal filed with the CDCR director or
8 designee. Id. § 3084.5; Brodheim v. Cry, 584 F.3d 1262, 1264-65
9 (9th Cir. 2009); Barry v. Ratelle, 985 F. Supp. 1235, 1237 (S.D.
10 Cal. 1997). This satisfies the administrative remedies exhaustion
11 requirement under § 1997e(a). Barry, 985 F. Supp. at 1237-38.

12 Non-exhaustion under § 1997e(a) is an affirmative defense
13 which should be brought by defendants in an unenumerated motion to
14 dismiss under Federal Rule of Civil Procedure 12(b). Wyatt v.
15 Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003).

16 Defendants argue Plaintiff has not exhausted all available
17 administrative remedies for his deliberate indifference claims. A
18 search of the Inmate Appeals Branch's computer records was
19 conducted for all appeals filed by Plaintiff, and a computer
20 print-out of the results was generated. (Foston Decl. ¶ 6.) The
21 computer print-out comprises "each and every appeal" to the
22 Director's level of review filed by Plaintiff and "accepted for
23 review" from 1993 to January 20, 2010 or "screened-out" at the
24 Director's level of review from 2000 to January 20, 2010. (Id.)
25 Defendants claim that the Inmate Appeals Branch has no record of
26 Plaintiff having pursued any appeals relating to his deliberate
27 indifference claims to the Director's level of review. (Foston
28

1 Decl. at 6; Ex. A.) Specifically, they argue that he only
2 submitted two inmate appeals for review at the Director's level of
3 review, appeal log nos. SQ-07-01305 and SQ-07-02076, and neither
4 of those appeals involves the deliberate indifference claims found
5 in his amended complaint. In his letter filed on January 3, 2011,
6 Plaintiff concedes that these two inmate appeals are "totally
7 irrelevant to the pending case" (Pl.'s Jan. 3, 2011
8 Letter at 1.)

9 The Court now analyzes whether Plaintiff exhausted his
10 deliberate indifference claims relating to each of his
11 aforementioned medical problems:

12 I. Lack of Treatment for Urological Problems

13 Plaintiff does not allege, nor does the record indicate, that
14 he pursued an inmate appeal to the Director's level of review
15 relating to his claim of lack of treatment for his urological
16 problems between December 2, 2004 and March 28, 2008. The Court
17 finds that Plaintiff did not exhaust all administrative remedies
18 available as to this claim. Accordingly, Defendants' motion to
19 dismiss is GRANTED as to Plaintiff's deliberate indifference claim
20 for lack of treatment for urological problems.
21

22 II. Lack of Treatment for Dehydration

23 As mentioned above, Plaintiff attempted to exhaust his
24 deliberate indifference claim relating to the lack of treatment
25 for his dehydration episode on December 24, 2006 by submitting
26 appeal log no. SQ-07-00209. However, the Inmate Appeals Branch
27 has no record of Plaintiff having pursued appeal log no. SQ-07-
28 00209 to the Director's level of review. (Foston Decl. at 6; Ex.

1 A.) Plaintiff does not allege, nor does the record indicate, that
2 Plaintiff pursued appeal log no. SQ-07-00209 to the Director's
3 level of review. Instead, Plaintiff argues that the Appeals
4 Coordinator's Office "deliberately used every means available to
5 thwart" his pursuit of appeals. (Pl.'s October 7, 2010 letter at
6 1.) As mentioned above, Plaintiff concedes that appeal log no.
7 SQ-07-00209 was "not pursued" to the Director's level of review;
8 however, he holds the "Appeals Coordinator" responsible based on
9 alleged "misdirection." (Pet. at C-4.) Plaintiff makes
10 conclusory allegations about the inadequacy of the administrative
11 grievance process, which is not a sufficient ground to defeat
12 dismissal of a complaint for failure to exhaust. See White v.
13 McGinnis, 131 F.3d 593, 595 (6th Cir. 1997). Furthermore, there
14 is no evidence in the record that prison officials deliberately
15 lost or failed to honor Plaintiff's appeal log no. SQ-07-00209.
16 Instead, the record shows Plaintiff failed to utilize the prison's
17 administrative grievance process properly because he did not
18 pursue appeal log no. SQ-07-00209 to the Director's level of
19 review. Because the PLRA's exhaustion requirement requires
20 "proper exhaustion" of administrative remedies, Woodford, 548 U.S.
21 at 93, Plaintiff did not satisfy this requirement; he did not
22 comply with SQSP's procedural rules of pursuing inmate appeals to
23 the highest level of review.

24 Based on the record, including Plaintiff's statements above,
25 the Court finds that he has conceded non-exhaustion as to his
26 deliberate indifference claim for lack of treatment for
27 dehydration, and has not alleged any exception to the exhaustion
28 requirement. Accordingly, Defendants' motion to dismiss is

1 GRANTED as to his claim relating to the lack of treatment for his
2 dehydration.

3 III. Lack of Treatment for Spinal Arthritic Disk Degeneration

4 Plaintiff does not allege, nor does the record indicate, that
5 Plaintiff pursued a 602 inmate appeal to the Director's level of
6 review relating his claim of lack of treatment for his Spinal
7 Arthritic Disk Degeneration problems between December 2, 2004 and
8 March 28, 2008. Accordingly, the Court GRANTS Defendants' motion
9 to dismiss on this issue because Plaintiff did not exhaust all
10 administrative remedies available as to this claim.

11 CONCLUSION

12 For the foregoing reasons,

13
14 1. The Court DISMISSES without prejudice Plaintiff's claims
15 against Defendant Capozoli under Federal Rule of Civil Procedure
16 4(m). As mentioned above, Plaintiff's claims against Defendant
17 Mendius have previously been dismissed without prejudice under
18 Rule 4(m).

19 2. The Court GRANTS the remaining Defendants' motion to
20 dismiss Plaintiff's Eighth Amendment claims of deliberate
21 indifference as unexhausted. This dismissal is without prejudice.
22

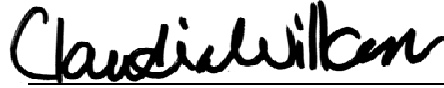
23 3. The Clerk of the Court shall enter judgment in
24 accordance with this Order, terminate all pending motions, and
25 close the file.

26 4. This Order terminates Docket no. 32.
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IT IS SO ORDERED.

DATED: 3/16/2011



CLAUDIA WILKEN

United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 LEONARD A HASKINS,
6

Case Number: CV08-02226 CW

7 Plaintiff,

CERTIFICATE OF SERVICE

8 v.
9

10 ROBERT AYERS JR et al,
11

Defendant.
12 _____/

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
14 Court, Northern District of California.

15 That on March 16, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
17 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
located in the Clerk's office.
18
19

20 Leonard A. Haskins
21 800 Main St., Apt. #207
22 Redwood City, CA 94063

23 Dated: March 16, 2011

24 Richard W. Wieking, Clerk
25 By: Nikki Riley, Deputy Clerk
26
27
28