IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

TYRIN N. SMITH,

Plaintiff,

vs.

RICHARD HARRINGTON, et al.,

Defendants.

Case No. 14-cv-1150-SMY-PMF

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation ("Report") (Doc. 69) of Magistrate Judge Philip M. Frazier recommending this Court deny the Motion for Summary Judgment filed by Defendants Angela Crain, Richard Harrington and Gail Walls (Doc. 49) and the Motion for Summary Judgment filed by Defendants Dr. Fuentes and Dr. Nwaobasi (Doc. 53). Both motions seek summary judgment for failure to exhaust administrative remedies. The Report finds that defendants have not satisfied their burden of proof.

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.* "If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error." *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Court has received no objection to the Report. The Court has reviewed Defendants' Motions and case history and finds that the Report is not clearly erroneous. Accordingly, the Court **ADOPTS** the Report of Magistrate Judge Frazier (Doc. 69) and **DENIES** both motions for summary judgment (Docs. 49, 53).

IT IS SO ORDERED.

DATED: February 1, 2016

s/ *Staci M. Yandle*
STACI M. YANDLE
DISTRICT JUDGE