

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

<b>JOHNATHAN IVY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 15-CV-331-SMY-RJD</b>
	)	
<b>THOMAS SPILLER, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM AND ORDER**

**YANDLE, District Judge:**

This matter is before the Court on the Report and Recommendation of United States Magistrate Judge Philip M. Frazier (Doc. 108) recommending that Defendants’ motions for summary judgment for failure to exhaust administrative remedies (Docs. 59 and 63) be granted.<sup>1</sup> Plaintiff filed a timely objection to the Report and Recommendation (Doc. 109). For the following reasons, the Report and Recommendation of Magistrate Judge Frazier is **ADOPTED** in its entirety.

Plaintiff Johnathan Ivy is an inmate with the Illinois Department of Corrections (“IDOC”) and he filed suit pursuant to 42 U.S.C. § 1983 asserting that the defendants violated his rights under the Eighth Amendment. Ivy states in his complaint that his Eighth Amendment rights were violated at Pinckneyville Correctional Center (“Pinckneyville”) because the facility implemented a “two meals a day” policy where inmates are no longer served breakfast. As a result, Ivy did not have any food to take along with his morning medication. Also, Ivy states that his health was negatively affected by the prison food because it contained too much soy.

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<sup>1</sup> Magistrate Judge Frazier has retired from the Court and this case has been reassigned to Magistrate Judge Reona J. Daly.

On April 15, 2015, Ivy's Complaint was screened pursuant to 28 U.S.C. § 1915A, and he was permitted to proceed on the following claims:

**Count 1:** Eighth Amendment claim against Defendants Spiller (Pinckneyville Warden) and Shah (Wexford Doctor), for deliberate indifference to Plaintiff's medical need to be given food or milk to take with his morning medications,

**Count 2:** Eighth Amendment claim against Defendants Spiller, Shah, Bates (Deputy Director of IDOC), and Bailey (Pinckneyville Food Service Administrator) for deliberate indifference to Plaintiff's need for a non-soy diet in light of the serious physical symptoms he has experienced from his consumption of soy-based foods.

The defendants moved for summary judgment on the basis that Ivy failed to exhaust administrative remedies before filing suit. Judge Frazier held a *Pavey* evidentiary hearing on June 28, 2016 with Ivy in attendance *pro se* from Menard Correctional Center via videoconference. See *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008). Based on the testimony and records presented during the hearing, Judge Frazier found: that the IDOC administrative remedies process was not unavailable to Ivy; that records filed by Ivy and the defendants demonstrate that Ivy was able to utilize the IDOC grievance process in late 2014 through early 2015; that IDOC staff did respond to his grievances; that Ivy's credibility was significantly diminished in light of the fact that he received a response to his February 20, 2015 grievance concerning medical issues unrelated to this lawsuit; and that the grievances Ivy did submit did not address the issues in this lawsuit. As a result, Judge Frazier concluded that Ivy did not properly exhaust his available administrative remedies prior to filing suit and therefore, Defendants are entitled to summary judgment.

Where timely objections are filed, this Court must undertake a *de novo* review of the Report and Recommendation. 28 U.S.C. § 636(b)(1)(B), (C); FED. R. CIV. P. 72(b); SDIL-LR 73.1(b); *Harper v. City of Chicago Heights*, 824 F. Supp. 786, 788 (N.D. Ill. 1993); *see also*

*Govas v. Chalmers*, 965 F.2d 298, 301 (7th Cir. 1992). Upon review of the record in the case and Judge Frazier's Report, the Court finds that the grievance process was available to Ivy in late 2014 and early 2015. In fact, Ivy utilized the procedure during this period and received responses. However, the grievances he submitted addressed issues unrelated to the claims in this case. The 3 grievances Ivy attached to his Complaint were not submitted to the ARB for disposition as was required in order for Ivy to complete the grievance process. Thus, the Court fully agrees with Judge Frazier's findings, analysis and conclusions and adopts his Report and Recommendation.

**IT IS SO ORDERED.**

**DATED: April 6, 2017**

**s/ Staci M. Yandle**  
**STACI M. YANDLE**  
**United States District Judge**