

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

PATRICK JUSTI,

Plaintiff,

v.

WEXFORD HEALTH SERVICES, DR.
VIPIN SHAH, DR. BUTALID, DR.
MICHAEL ADAMS and DR. KURT
OSMUNDSON,

Defendant.

Case No. 16-cv-396-JPG-SCW

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 53) of Magistrate Judge Stephen C. Williams recommending that the Court grant the motion for summary judgment filed by defendants Butalid, Adams and Osmundson (Doc. 48) because plaintiff Patrick Justi failed to exhaust his administrative remedies for his claims against them (Counts 2, 3 and 4, respectively). Justi objects to the Report (Doc. 55).

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. *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).

This case stems from allegedly inadequate medical treatment provided by the three defendants, doctors who worked at Robinson Correctional Center (“Robinson”), to Justi while he was incarcerated at Robinson. The dates each of these providers saw Justi is set forth in the table

below:

Doctor	Date saw Justi
Butalid	April 23, 2015
Adams	May 19, 2015
Osmundson	June 18, 2015 July 9, 2015

Justi was transferred from Robinson to Jacksonville Correctional Center (“Jacksonville”) on July 15, 2015. He filed a grievance directly with the Administrative Review Board (“ARB”) about the Robinson doctors’ treatment – or lack of it. The grievance is dated September 6, 2015, but Justi’s signature is dated September 14, 2015. The ARB received the grievance on September 17, 2015, and denied it as untimely to the extent it pertained to issues at Robinson.

In the Report, Magistrate Judge Williams noted the requirement that an inmate exhaust administrative remedies in the manner required by prison administrative rules. At the time Justi filed his grievance with the ARB,¹ the Illinois Administrative Code required an inmate to submit directly to the ARB any non-property grievance pertaining to a facility other than the one in which he is incarcerated at the time of his grievance. *See* 20 Ill. Admin. Code § 504.870(a)(4) (2015). The ARB is required to “review and process the grievance in accordance with Section 504.850,” which states, in part, that if an inmate is not satisfied with the warden’s decision on a grievance, “he or she may appeal in writing to the Director within 30 days after the date of the decision.” 20 Ill. Admin Code § 504.850(a) (2015). Magistrate Judge Williams construed this provision to require an inmate to submit a direct appeal to the ARB within 30 days. He found that Justi filed his grievance more than 30 days after the allegedly improper treatment *and* 30 days after his transfer to Jacksonville, two potentially relevant accrual dates.

¹ The rules have changed as of April 1, 2017, and Magistrate Judge Williams cites to the current version of the rule, although his conclusion rests on the version in existence at the relevant time.

Magistrate Judge Williams further found that the doctors' conduct did not amount to a continuing violation such that later related conduct could have brought the earlier conduct within the grievance filing period. Instead, they were discrete instances of alleged deliberate indifference to Justi's medical needs.

Justi objects to the Report, arguing that he had 60, not 30, days from the date of his transfer to Jacksonville to submit his grievance to the ARB. He notes that he has received other responses from the ARB in similar circumstances (harm occurred at another institution) indicating a 60-day period to file a grievance directly with the ARB, and that he filed his grievance 53 days after his transfer from Robinson to Jacksonville. He also maintains that the defendants' collective failure to adequately treat his medical problems amounts to a continuing violation that brings all conduct within that 60-day period.

The Court reviews the matter *de novo* and agrees with Justi that he had 60 days to file his grievance directly with the ARB. The 30-day period in § 504.850(a) cited by Magistrate Judge Williams simply cannot apply because it expressly runs from the date of the warden's decision, and there is no warden's decision in grievances filed directly with the ARB. On the other hand, another section of the Illinois Administrative Code provides, "A grievance shall be filed within 60 days after the discovery of the incident, occurrence, or problem that gives rise to the grievance." 20 Ill. Admin. Code § 504.810(a) (2015). There is no problem or inconsistency in applying this general statement to Justi's grievance. *See, e.g., Santiago v. Anderson*, 496 F. App'x 630, 637 (7th Cir. 2012) ("Illinois inmates have only 60 days to file a grievance" directly to the ARB); *Dole v. Chandler*, 438 F.3d 804, 807-08 (7th Cir. 2006) ("By this time, the sixty day period for filing a timely grievance [to the ARB] had passed."). Indeed, nothing in the Illinois Administrative Code

indicates an inmate's transfer to another institution affects the deadline for filing a grievance, only the destination of that grievance.

Nevertheless, Justi is incorrect in stating that this 60-day period begins to run on the date of his transfer between prisons. As expressly stated in § 504.810(a), the period begins to run at the time the inmate discovers the problem. Here, this was when Justi saw each of the doctors and learned each would not provide the treatment he deemed adequate. The 60-day period for filing a grievance against each doctor is reflected in the table below:

Doctor	Date saw Justi	60 days later
Butalid	April 23, 2015	June 22, 2015
Adams	May 19, 2015	July 18, 2015
Osmundson	June 18, 2015 July 9, 2015	August 17, 2015 September 7, 2015

Justi's grievance – which he dated September 6, 2016 but signed on September 14, 2015, and presumably mailed shortly thereafter – falls beyond all of the applicable 60-day periods.

Consequently, it was too late to exhaust Justi's remedies for his claims against Butalid, Adams or Osmundson.

As for the continuing violation question, Magistrate Judge Williams was correct for the reasons states in the Report. While it is true that Justi's medical problems were ongoing, he alleges the deliberate indifference of three different individuals on discrete occasions.

For the foregoing reasons, the Court hereby:

- **ADOPTS** the conclusions in the Report as **MODIFIED** by the reasoning stated in this order (Doc. 53);
- **GRANTS** the motion for summary judgment filed by defendants Butalid, Adams and Osmundson (Doc. 48);
- **DISMISSES** Counts 2, 3 and 4 against defendants Adams, Butalid and Osmundson **without prejudice** for failure to exhaust administrative remedies. Those defendants are terminated from this case; and

- **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of the case.

IT IS SO ORDERED.

DATED: July 18, 2017

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE