

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

**CHARLES E. THORNTON,
#Y19115,**

Plaintiff,

vs.

**JACQUELINE LASHBROOK,
DR. TROST,
and GAIL WALLS,**

Defendants.

Case No. 17-cv-00761-DRH

MEMORANDUM AND ORDER

HERNDON, District Judge:

Plaintiff Charles Thornton, an inmate who is currently incarcerated at Menard Correctional Center (“Menard”), brings the instant civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). In the Complaint, Plaintiff alleges that Nurse Walls, Doctor Trost, and Warden Lashbrook would not authorize a prescription refill for Neurontin, which he needs to treat nerve pain associated with an old gunshot wound. (Doc. 1, pp. 9-12). As a result, Plaintiff suffered from debilitating pain while he waited for the refill from March 7-29, 2017. *Id.* Plaintiff now seeks declaratory judgment and monetary damages against the defendants. He also seeks “immediate” injunctive relief, in the form of an order requiring prison officials to send him to an expert for further evaluation and physical therapy before his prescription expires. (Doc. 1, p. 13).

The Complaint is subject to preliminary review under 28 U.S.C. § 1915A, which provides:

(a) **Screening** – The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) **Grounds for Dismissal** – On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–

- (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Frivolousness is an objective standard that refers to a claim that any reasonable person would find meritless. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The claim of entitlement to relief must cross “the line between possibility and plausibility.” *Id.* at 557. At this juncture, the factual allegations of the *pro se* complaint are to be liberally construed. *See Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009). The Complaint survives screening under this standard.

Complaint

According to the allegations in the Complaint, Plaintiff was shot in the mouth prior to his incarceration. (Doc. 1, p. 9). The bullet lodged in his spine

near his C2 and C3 vertebrae. *Id.* Because it was lodged next to Plaintiff's spinal cord, surgical removal of the bullet could result in paralysis. *Id.* Doctors at John H. Stroger Hospital and Cook County Jail recommended against surgery. *Id.*

Plaintiff consequently suffers from "chronic and agonizing pain" that is treated with Neurontin.¹ (Doc. 1, p. 9). On March 6, 2017, a nurse at Menard informed Plaintiff that his prescription was set to expire the following day. *Id.* Plaintiff submitted several urgent sick call slips, in which he requested a prescription refill and warned medical staff that he would suffer from excruciating pain without it. *Id.*

In response, Plaintiff was scheduled for an appointment with Doctor Trost on March 12th, but it was cancelled before Plaintiff ever met with the doctor. (Doc. 1, p. 9). The same day, Plaintiff filed an emergency grievance with Warden Jacqueline Lashbrook. (Doc. 1, pp. 9-10). In it, Plaintiff explained that he was experiencing "severe pain" that was chronic in nature and prevented him from performing daily tasks. (Doc. 1, p. 10). He allegedly suffered from discomfort and pricking pain in his right shoulder and arm that made it difficult to get out of his top bunk. (Doc. 1, p. 11). At times, he could not read, write, or leave his cell. *Id.* He complained that the prison's health care unit and its director, Nurse Gail Walls, had "done nothing to even reduce the pain." (Doc. 1, p. 10).

He was scheduled for appointments with Doctor Trost on March 15th and 17th. (Doc. 1, p. 10). However, these appointments were also cancelled. *Id.*

¹ Neurontin is a prescription medication used to relieve nerve pain, among other things. See <https://medlineplus.gov/druginfo/meds/a694007.html>. The generic form of this drug is referred to as Gabapentin. *Id.*

Doctor Trost never inquired into the status of Plaintiff's pain or his prescription. *Id.* He never provided Plaintiff with any treatment in response to these complaints. *Id.*

On March 19th, the prescription was finally refilled. (Doc. 1, p. 11). However, Plaintiff did not actually receive it until ten days later on March 29th. *Id.* In the meantime, he received no other form of pain reliever. *Id.*

Plaintiff now names Nurse Walls, Doctor Trost, and Warden Lashbrook in connection with his claim that he was denied adequate medical care for his condition. (Doc. 1, p. 12). He seeks declaratory judgment and monetary relief against them. *Id.* Plaintiff also seeks "immediate" follow-up treatment, including an evaluation by an expert and physical therapy before his prescription medication expires. (Doc. 1, p. 13).

Discussion

To facilitate the orderly management of future proceedings in this case, and in accordance with the objectives of Federal Rules of Civil Procedure 8(e) and 10(b), the Court deems it appropriate to organize the claims in Plaintiff's *pro se* Complaint (Doc. 1) into the following count:

Count 1 - Eighth Amendment deliberate indifference to medical needs claim against Nurse Walls, Doctor Trost, and Warden Lashbrook for delaying Plaintiff's prescription refill for Neurontin from March 7-29, 2017.

The parties and the Court will use this designation in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. The designation does not constitute an opinion regarding the merits of the claim.

Both claims arise under the Eighth Amendment, which prohibits the cruel and unusual punishment of prisoners. U.S. CONST., amend. VIII. *See also Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015) (citations omitted); *Berry v. Peterman*, 604 F.3d 435 (7th Cir. 2010). Deliberate indifference to serious medical needs of prisoners violates the proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Erickson v. Pardus*, 551 U.S. 89, 94 (2006) (*per curiam*). A prisoner who wishes to bring an Eighth Amendment claim for the denial of medical care must show that he suffered from a sufficiently serious medical condition (*i.e.*, an objective standard) and state officials acted with deliberate indifference to his health or safety (*i.e.*, a subjective standard). *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Chapman v. Keltner*, 241 F.3d 842, 845 (7th Cir. 2001).

A medical condition is considered objectively serious if it has been diagnosed by a physician as requiring treatment or would be obvious to a layperson. *See Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014) (citing *Knight v. Wiseman*, 590 F.3d 458, 463 (7th Cir. 2009)). Plaintiff's bullet wound and associated nerve pain have been diagnosed by multiple doctors. *See Thornton v. Baker*, 2016 WL 4450870 (N.D. Ill. 2016) (Plaintiff's condition deemed sufficiently serious to support an Eighth Amendment claim where his preexisting bullet wound and associated pain were exacerbated when he slipped and fell). *See also Terrell v. Madison Cnty. Sheriff's Dep't*, 2017 WL 2929461 (S.D. Ill. 2017) (painful gunshot wound that left bullet lodged in plaintiff's leg deemed sufficiently

serious to support Eighth Amendment claim). These doctors have prescribed Plaintiff medication for residual nerve pain. *Williams v. Liefer*, 491 F.3d 710, 716 (7th Cir. 2007) (pain is an objectively serious medical condition). The objective component of this claim is satisfied for screening purposes.

To satisfy the subjective component of this claim, the Complaint must “demonstrate that prison officials acted with deliberate indifference. *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005) (quoting *Wilson v. Seiter*, 501 U.S. 294, 297 (1991)). This standard is satisfied when prison officials “know of and disregard an excessive risk to inmate health” by being “aware of facts from which the inference could be drawn that a substantial risk of serious harm exists” and “draw[ing] the inference.” *Greeno*, 414 F.3d at 653 (quoting *Farmer*, 511 U.S. at 834). Ignoring an inmate’s complaints of pain and thereby prolonging it satisfies the deliberate indifference standard. *Smith v. Knox Cnty. Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012).

Plaintiff alleges that all three defendants ignored his repeated, urgent, and even emergency requests for treatment of excruciating pain to no avail. An official who is “alerted to an excessive risk to inmate safety or health through a prisoner’s correspondence” may be liable for an Eighth Amendment violation if the official possessed the authority to stop the violation but failed to exercise that authority. *Perez*, 792 F.3d at 781 (citing *Vance v. Peters*, 97 F.3d 987, 992-93 (7th Cir. 1996)). Under the circumstances, Count 1 shall receive further review against Nurse Walls, Doctor Trost, and Warden Lashbrook.

Interim Relief

Plaintiff included a request for “immediate” injunctive relief in his Complaint. (Doc. 1, p. 13). He did not specifically request a temporary restraining order (“TRO”) or a preliminary injunction. *Id.* He also did not invoke Rule 65 of the Federal Rules of Civil Procedure, which governs both. *Id.*

The Court is left to figure out which type of relief he seeks. Plaintiff expresses concern about another lapse in medication, but makes it clear that he is currently taking Neurontin. (Doc. 1, pp. 9-13). He also requests further medical evaluation and treatment, without addressing any prior need or recommendation for it. *Id.* Plaintiff does not include any factual allegations suggesting that he faces an emergency or requires relief now. *Id.*

The Court therefore construes the request for relief as a Motion for Preliminary Injunction made pursuant to Rule 65(a). The motion shall be separately docketed and referred to a United States Magistrate Judge for handling. If Plaintiff believes that more urgent relief is necessary, he may file a separate motion for a TRO pursuant to Rule 65(b) at any time while the action is pending. In it, he must set forth the exact relief he seeks, the reasons for seeking the relief, and the factual allegations supporting his request.

Filing Fee

Plaintiff filed the instant action without paying a \$400.00 filing fee or filing a Motion for Leave to Proceed *in forma pauperis* (“IFP Motion”). He remains obligated to do so. Failure to pay the entire \$400.00 filing fee or file a properly

completed IFP Motion within thirty days (on or before August 23, 2017) shall result in dismissal of this action for failure to comply with an Order of this Court. See FED. R. CIV. P. 41(b).

Disposition

The Clerk is **DIRECTED** to **ADD** a Motion for Preliminary Injunction to the docket sheet in CM/ECF.

IT IS HEREBY ORDERED that **COUNT 1** is subject to further review against Defendants **NURSE GAIL WALLS, DOCTOR TROST, and WARDEN JACQUELINE LASHBROOK**. As to **COUNT 1**, the Clerk of Court shall prepare for the Defendants: (1) Form 5 (Notice of a Lawsuit and Request to Waive Service of a Summons), and (2) Form 6 (Waiver of Service of Summons). The Clerk is **DIRECTED** to mail these forms, a copy of the Complaint (Doc. 1), and this Memorandum and Order to each Defendant's place of employment as identified by Plaintiff. If a Defendant fails to sign and return the Waiver of Service of Summons (Form 6) to the Clerk within 30 days from the date the forms were sent, the Clerk shall take appropriate steps to effect formal service on that Defendant, and the Court will require that Defendant to pay the full costs of formal service, to the extent authorized by the Federal Rules of Civil Procedure.

With respect to a Defendant who no longer can be found at the work address provided by Plaintiff, the employer shall furnish the Clerk with the Defendant's current work address, or, if not known, the Defendant's last-known address. This information shall be used only for sending the forms as directed

above or for formally effecting service. Any documentation of the address shall be retained only by the Clerk. Address information shall not be maintained in the court file or disclosed by the Clerk.

Defendants are **ORDERED** to timely file an appropriate responsive pleading to the Complaint and shall not waive filing a reply pursuant to 42 U.S.C. § 1997e(g).

Pursuant to Local Rule 72.1(a)(2), this action is **REFERRED** to a **United States Magistrate Judge** for further pre-trial proceedings, including the Motion for Preliminary Injunction.

Further, this entire matter shall be **REFERRED** to a **United States Magistrate Judge** for disposition, pursuant to Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *if all parties consent to such a referral*.

If judgment is rendered against Plaintiff, and the judgment includes the payment of costs under § 1915, Plaintiff will be required to pay the full amount of the costs, regardless of whether an application to proceed *in forma pauperis* is granted. *See* 28 U.S.C. § 1915(f)(2)(A).

Plaintiff is **ADVISED** that at the time application was made under 28 U.S.C. § 1915 for leave to commence this civil action without being required to prepay fees and costs or give security for the same, the applicant and his or her attorney were deemed to have entered into a stipulation that the recovery, if any, secured in the action shall be paid to the Clerk of the Court, who shall pay therefrom all unpaid costs taxed against plaintiff and remit the balance to plaintiff. Local Rule

3.1(c)(1).

Finally, Plaintiff is **ADVISED** that he is under a continuing obligation to keep the Clerk of Court and each opposing party informed of any change in his address; the Court will not independently investigate his whereabouts. This shall be done in writing and not later than **7 days** after a transfer or other change in address occurs. Failure to comply with this order will cause a delay in the transmission of court documents and may result in dismissal of this action for want of prosecution. See FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

DATED: July 24, 2017

David R. Herndon



Digitally signed by Judge
David R. Herndon
Date: 2017.07.24
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United States District Judge