

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-12013-RWZ

RICHARD NUNES

v.

UMASS CORRECTIONAL HEALTH, *et al.*

ORDER

September 30, 2011

ZOBEL, D.J.

Since the hearing on Plaintiff's Motion for a Preliminary Injunction (Docket # 27), defendants have offered a number of accommodations to enable plaintiff to obtain his HIV medications daily at the Health Services Unit. These accommodations are deemed by plaintiff to be inadequate to meet his needs given his seriously compromised health. The parties have submitted several status reports detailing, on one side, plaintiff's ongoing difficulties and resultant inability to comply with defendants' rules and even to take advantage of the accommodations offered, and on the other side, defendants' willingness to accommodate plaintiff and his, not always entirely passive, resistance. The most recent status reports pertaining to an incident that resulted in plaintiff being taken to the segregation unit paint very different pictures about the underlying incident.

To the extent plaintiff seeks to restore the KOP (Keep On Person) rule that permitted inmates to keep certain medications in their cells, the motion for a preliminary injunction is denied. Defendants operate in the context of a prison and they are entitled to make reasonable changes in the rules even if such changes adversely

impact some inmates and even if those inmates behaved appropriately under the prior regime. However, given the requirements of the Americans With Disabilities Act, 42 U.S.C. § 12102(2) et seq., defendants must make reasonable accommodations to those inmates who are unable to comply with the new rules. Although clearly wanting from plaintiff's perspective, I cannot, on this record, say that the accommodations offered are inadequate to provide plaintiff with the needed medications. The record is not clear on the central issue - whether plaintiff, with the accommodation offered, is unable to comply with the rule or unwilling to do so.

The motion for a preliminary injunction is denied.

September 30, 2011

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE