

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN HAAG,

Plaintiff,

v.

HEIDI WASHINGTON, et al.,

Defendants.

Case No. 1:17-cv-311

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 involving Plaintiff's claims that Defendant Corizon Health Services and seven individual Defendants violated his Eighth Amendment right to be free from cruel and unusual punishment by not adequately treating his restless leg syndrome (RLS) (ECF No. 1). This Court dismissed Corizon Health Services and four of the individual Defendants for Plaintiff's failure to state a claim against them (Orders, ECF Nos. 5 & 30). Plaintiff subsequently amended his complaint to remove a defendant and to add American with Disabilities Act (ADA) and gross negligence claims against remaining Defendants Burke and Kerstein (ECF No. 46). On January 31, 2018, Defendant Burke moved for summary judgment (ECF No. 50). On February 6, 2018, Defendant Kerstein moved for summary judgment (ECF No. 54). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R) on May 16, 2018, recommending that Defendants' motions be granted and this action terminated. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation, to which Defendants filed a response. In accordance with 28 U.S.C.

§ 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff first argues that the Magistrate Judge erred by indicating that Plaintiff “failed to respond” to Defendants’ motions for summary judgment (Pl. Obj., ECF No. 63 at PageID.536; R&R, ECF No. 60 at PageID.485). However, Plaintiff’s argument reveals no inaccurate statement by the Magistrate Judge. Plaintiff did not timely file any response within the 28-day period set forth in the Case Management Order in this case (CMO, ECF No. 11 at PageID.49). *See also* W.D. Mich. LCivR 7.2(c) (setting forth a 28-day response period for dispositive motions). And Plaintiff had not yet filed any response to the motions at the time the Magistrate Judge issued the Report and Recommendation. Indeed, Plaintiff filed his untimely response on June 4, 2018, i.e., the same day on which he filed his objection to the Report and Recommendation resolving Defendants’ motions, and several months after Defendants’ motions were served on him. Plaintiff’s objection is without merit and is properly denied.

Second, Plaintiff argues that the Magistrate Judge erred by “improperly accepting the Defendant’s version of the facts” (Pl. Obj., ECF No. 63 at PageID.536). This argument is also without merit. Because Plaintiff failed to timely file a response to Defendants’ motions, the Magistrate Judge accurately indicated that no “evidence contradicting or otherwise calling into question the evidence submitted by the Defendants” was available for the Report and Recommendation (R&R, ECF No. 60 at PageID.484). The remainder of Plaintiff’s objection is comprised of his description of the medical record and his assessment of his treatment, but neither serves to demonstrate any factual or legal error in the Magistrate Judge’s conclusion, which was predicated on the well-established proposition that allegations of inadequate medical care do not

state a claim under either the Eighth Amendment or the ADA (R&R, ECF No. 60 at PageID.489-490).¹

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. All claims having now been resolved, the Court will also enter a Judgment consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of the Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 63) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 60) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Burke's Motion for Summary Judgment (ECF No. 50) is GRANTED.

IT IS FURTHER ORDERED that Defendant Kerstein's Motion for Summary Judgment (ECF No. 54) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of the Judgment would not be taken in good faith.

Dated: September 5, 2018

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

¹ Likewise, Plaintiff's response to Defendants' motions, even if properly considered at this late date, does not compel a different conclusion because the response merely sets forth Plaintiff's disagreement with the medical treatment he received (ECF No. 62 at PageID.499-501).