

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

RICKY GENE STEWART

PETITIONER

V.

CIVIL ACTION NO. 2:11-CV-207-KS-MTP

RONALD WOODALL, et al.

RESPONDENTS

ORDER

On May 2, 2012, the Magistrate Judge entered his Report and Recommendation [39] in this matter, recommending that the Court dismiss this matter without prejudice because the Petitioner failed to exhaust his administrative remedies. In response, Petitioner argues that he has, in fact, exhausted his administrative remedies.

Petitioner claims that Defendants failed to provide him with adequate medical treatment after a shoulder surgery. Petitioner's grievance No. SMCI-11-225 concerns that issue. Petitioner received his First Step response to grievance No. SMCI-11-225 on March 24, 2011, and he appealed to the Second Step on April 11, 2011. The ARP responded, however, with a letter informing Petitioner that he had failed to comply with the applicable procedural rules and granted Petitioner five additional days to cure the procedural deficiency. It explicitly warned him that failure to do so would result in the cancellation of his ARP request. Petitioner never responded. Therefore, the Magistrate Judge correctly concluded that Petitioner failed to exhaust his administrative remedies before filing the instant petition.

As required by 28 U.S.C. § 636(b)(1), the Court has conducted an independent

review of the entire record and a *de novo* review of the matters raised by the Petitioner's objections. The Court concludes that the Report and Recommendation [39] is an accurate statement of the facts and a correct analysis of the law in all respects. Therefore, the Court accepts, approves, and adopts the factual findings and legal conclusions contained in the Report and Recommendation [39] entered by United States Magistrate Judge Michael T. Parker pursuant to 28 U.S.C. § 636(b)(1).

The Court **grants** the Motion to Dismiss [19] filed by Defendants. Petitioners' claims are **dismissed without prejudice**.

SO ORDERED AND ADJUDGED this 8th day of June, 2012.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE