

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HENRY UNSELD WASHINGTON,)	
)	Civil Action No. 11 – 1046
Plaintiff,)	
)	Chief Magistrate Judge Lisa Pupo Lenihan
v.)	
)	ECF No. 131
LOUIS S. HOLINO, et al,)	
)	
Defendants.)	

ORDER

Pending before the court is a Motion by the Plaintiff requesting that the Court order a physical examination of him by specialists pursuant to Fed. R. Civ. P. 35. (ECF No. 131). Also pending is a Motion for a Preliminary Injunction (ECF No. 126). In both of these motions, Plaintiff claims that he has medical needs that are not being adequately attended to by the institution. The court will address Plaintiff's motion for a physical examination pursuant to Fed. R. Civ. P. 35.

This rule allows the court to order a party whose mental or physical condition is in controversy to submit to a physical or mental examination. It does not, however, allow the court to pay for a medical expert for one party in the case. Court appointed experts are covered by Fed. R. Civ. P. 706, which gives the court power to appoint and pay an expert for the purpose of assisting the court, not to aid a party. The Third Circuit case of *Boring v. Kozakiewicz*, 833 F.2d 468 (3d Cir. 1987) addresses this issue. In that case some former pretrial detainees brought action against county officials to recover for denial of medical treatment. The case was decided before Pennsylvania Rule 1042.3 was enacted, however the lower court found that Plaintiffs needed expert testimony in order to prove their case and, because they did not have any, the case

was dismissed. Plaintiffs complained on appeal that the district court wrongfully refused to pay for an expert medical witness. The Third Circuit stated as follows:

Congress has authorized the courts to waive prepayments of such items as filing fees and transcripts if a party qualifies to proceed in forma pauperis... However, we have been directed to no statutory authority nor to any appropriation to which the courts may look for payment of expert witness fees in civil suits for damages.

833 F.2d at 474. The Court has also been unable to find any authority that allows this. The Court does not deem it appropriate to fund expert witness testimony for one party. There are thousands of prisoner civil rights cases filed across the country. It is not only not authorized but is not realistic for the courts to use public funding to pay for expert witnesses for prisoners. As the Boring court pointed out, in “seeking government funding... Plaintiffs are in effect asking for better treatment than their fellow – citizens who have not been incarcerated but who have at least equal claims for damages.” 833 F.2d at 874.

While the Court will deny this Motion, in order for it to properly address the concerns raised by Plaintiff in both this motion and his request for a Preliminary Injunction (ECF No. 126) it would be helpful for the Court to have a summary, accompanied by an affidavit from an appropriate medical professional, of the medical treatment and care that Plaintiff has been receiving for his numerous ailments at SCI-Greene. The Defendants have provided a Response to the Request for Preliminary Injunction but the response only contains statements by counsel and is not supported by any affidavit verifying the authenticity of these statements. Therefore,

IT IS HEREBY ORDERED, this 5th day of June, 2012, that Plaintiff’s Motion for Order to Compel Defendants to Procure Plaintiff’s Physical Examination by Specialist (ECF No. 131) is **DENIED**.

IT IS FURTHER ORDERED that Defendants are to provide a summary of the medical treatment and care that Plaintiff has been receiving for his numerous ailments at SCI-Greene,

accompanied by an appropriate affidavit, no later than June 29, 2012. At that point, the court will rule on Plaintiff's Motion for a Preliminary Injunction.

A handwritten signature in black ink, appearing to read 'Lisa Pupo Lenihan', written in a cursive style.

Lisa Pupo Lenihan
United States Magistrate Judge

Cc: **HENRY UNSELD WASHINGTON**
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