

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT B. CIARPAGLINI,

Petitioner,

v.

ORDER

DANIEL BRAEMER,

07-C-590-S

Respondent.

Petitioner requests leave to proceed in forma pauperis. He alleges that respondent Braemer sprayed him with chemical agents causing him to have a grand mal seizure. He further alleges that respondent Braemer threatened him with additional harm.

28 U.S.C. §1915(g) states as follows

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Petitioner Ciarpaglini has on three or more occasions while incarcerated brought civil actions which were dismissed for the reasons listed in §1915(g). These cases are: Ciarpaglini v. Kick, et al., 96-C-427 (June 17, 1996, E.D. Wis.); Ciarpaglini v. Doyle, 96-C-847-S (October 11, 1996, W.D. Wis.) and Ciarpaglini v. Pray, et al., 96-C-598-S (October 11, 1996, W.D. Wis.).

As the Court has previously stated petitioner will not be able to proceed without showing documentation that he has exhausted his administrative remedies based on this Court's prior experience with his failure to do so. Petitioner alleges that he cannot exhaust his administrative remedies because the issue relates to a conduct report. Whether or not respondent Braemer subjected him to physical harm or threatened to cause him future harm may be raised in an inmate complaint.

Petitioner's request to proceed in forma pauperis will be denied without prejudice for his failure to exhaust administrative remedies.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's request to proceed in forma pauperis is DENIED and DISMISSED without prejudice.

Entered this 25th day of October, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge