

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN MURPHY,
Plaintiff,
V.
STATE OF CONNECTICUT, DEP'T OF
PUBLIC HEALTH, ET AL.,
Defendants.

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: PRISONER
: CASE NO. 3:04CV976 (RNC)
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RULING AND ORDER

Plaintiff, a Connecticut inmate who has Hepatitis C, brings this action pro se and in forma pauperis pursuant to 42 U.S.C. § 1983 against Connecticut's Department of Public Health ("DPH"), Investigator John Overstreet and Supervising Nurse Consultant Kathleen W. Boulware. After the medical department at MacDougall Correctional Institution declined to provide the plaintiff with treatment he requested, he filed a complaint with DPH requesting an investigation. In his complaint in this action, he alleges that the defendants failed to undertake a thorough investigation, claims that their failure to do so violated his Eighth Amendment right against cruel and unusual punishment, and seeks release from prison plus money damages.¹ For the reasons that follow, the action is dismissed without prejudice and plaintiff's motion for appointment of counsel (doc. # 8) is denied as moot.

¹ Plaintiff has another § 1983 case pending in this District in which he sues numerous defendants for failing to provide him with adequate medical care for his Hepatitis C. See Murphy v. Univ. of Connecticut, No. 3:03-CV-1598(WWE).

I. Facts

Plaintiff has been incarcerated since December 1995. In May 2000, while confined at MacDougall, he sought a specific type of Hepatitis C treatment from Dr. Edward Blanchette. The University of Connecticut Health Center Correctional Managed Health Care Utilization Management Unit denied Dr. Blanchette's request for a consultation. In late 2000, plaintiff sent a request to DPH to investigate the MacDougall medical department's failure to treat him. On December 22, 2000, defendant Boulware told him that defendant Overstreet had been assigned to investigate. On April 27, 2001, defendant Boulware informed the plaintiff that the investigation was complete, that DPH had concluded there was insufficient evidence to proceed, and that the case had been closed. On June 14, 2004, plaintiff filed this action.²

II. Discussion

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the court shall dismiss a prisoner's civil action "at any time if the court determines that. . . the action. . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii) (2000). If a complaint fails to state a claim on which relief may be granted, the court should dismiss it sua sponte,

² A prisoner's complaint is deemed to have been filed in this court on the day it was given to prison officials for mailing to the Clerk. See Dory v. Ryan, 999 F.2d 679, 682 (2d Cir. 1993). Plaintiff's complaint was mailed along with a letter he apparently signed on June 14, 2004. The court received the complaint on June 15, 2004.

regardless of whether the inmate has paid a filing fee or is proceeding in forma pauperis. See Carr v. Dvorin, 171 F.3d 115, 116 (2d Cir. 1999) (per curiam).

In reviewing the complaint, the court accepts the factual allegations as true and draws inferences in a light most favorable to the plaintiff. See Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000). Dismissal is appropriate only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. at 597 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In addition, "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim," the court should allow a pro se plaintiff to re-plead. See Gomez v. USAA Fed. Sav. Bank, 171 F.3d 794, 796 (2d Cir. 1999) (per curiam).

Deliberate indifference by prison officials to a prisoner's serious medical need constitutes cruel and unusual punishment in violation of the Eighth Amendment and provides a basis for a cause of action under § 1983. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). But a suit for deliberate indifference to a serious medical need cannot be maintained against a defendant who has no role in the provision of medical care. See Hanton v. Strange, No. 3:98CV706CFD, 2005 WL 733873, at *5 (D. Conn. Mar. 30, 2005). The complaint does not allege that any of the

defendants had such a role. To the contrary, the allegations of the complaint make it clear that the defendants are being sued only because they failed to thoroughly investigate. Accordingly, the complaint must be dismissed for failure to state a claim on which relief can be granted.

In addition, the complaint must be dismissed because the action is barred by the statute of limitations. In Connecticut, the general three-year personal injury statute of limitations applies to actions under § 1983. See Conn. Gen. Stat. § 52-577 (2004) (establishing Connecticut's three year statute of limitations for actions founded upon a tort); Lounsbury v. Jeffries, 25 F.3d 131, 134 (2d Cir. 1994) (applying Conn. Gen. Stat. § 52-577 to actions brought pursuant to 42 U.S.C. § 1983); In re State Police Litig., 888 F. Supp. 1235, 1248-49 (D. Conn. 1995) (same). As mentioned above, plaintiff filed this action on June 14, 2004, which was more than three years after DPH informed him its investigation was complete and the case was closed. Consequently, the action is time-barred.

III. Conclusion

For the foregoing reasons, the complaint is hereby dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief can be granted, and the motion for appointment of counsel is denied as moot. Because the investigation at issue was closed more than three years before

this action was filed, any action under § 1983 based on the investigation is almost certainly time-barred. Moreover, the allegations of the complaint, generously construed, do not suggest that, as a result of the investigation, plaintiff was deprived of any federal right. Nonetheless, if plaintiff has a good faith basis for believing he can plead a valid § 1983 claim based on the investigation at issue, he may file and serve an amended complaint on or before May 1, 2006. If no amended complaint is filed by then, this dismissal will be with prejudice. It is certified that any appeal in forma pauperis from this order would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a).

So ordered.

Dated at Hartford, Connecticut this 30th day of March, 2006.

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Robert N. Chatigny
United States District Judge