UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES J. CALCA, Plaintiff, v. REV. DANIEL KEEFE, CORRECTIONS OFFICER HICKMAN, and CORRECTIONS OFFICER ENNIS, each in his or her individual capacity, Defendants.	:	Civil No. 3:98CV01685(AWT)

RULING ON MOTION TO DISMISS

Plaintiff James Calca ("Calca") filed this civil rights action against the defendants, in their individual capacities only, pursuant to 42 U.S.C. §§ 1983 and 1985 and the Fourteenth Amendment to the United States Constitution, claiming: (1) violation of the plaintiff's First Amendment right to freedom of religion; (2) denial of medical care in violation of the plaintiff's Eighth Amendment right to be free from cruel and unusual punishment; and (3) intentional or negligent infliction of emotional distress under Connecticut state law.[1] The

[1] Section 1997e(e) of Title 42 of the United States Code provides that "[n]o Federal civil action may be brought by a prisoner . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury." The court notes that it appears that this section would operate to bar

defendants have moved to dismiss the complaint in its entirety. For the reasons set forth below, the defendants' motion is being granted.

I. Factual Allegations

For purposes of this motion to dismiss, the factual allegations in the plaintiff's complaint are taken as true.

The plaintiff is, and has been at all times relevant to this case, an inmate in the custody of the Connecticut Department of Corrections ("DOC"). The plaintiff is a member of the Roman Catholic Church. In February 1997, he requested to join an inmate prayer group on Saturdays and to attend Sunday Mass, both of which he did once, at the beginning of March. However, when he sought to attend the Saturday prayer group and Sunday Mass the following weekend, he was not released from his cell so he could do so. When the plaintiff asked defendant Reverend Daniel Keefe ("Keefe"), an employee of the DOC, why he had not been released to attend the prayer group and the worship service, he received no response.

Calca has a heart condition, which requires daily medication. On November 11, 1997, while Calca was speaking to his wife on the telephone, he experienced severe chest pains and dizziness. After hanging up the phone, Calca requested

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the plaintiff's claims for infliction of emotional distress. However, the court does not address this issue, as it has not been raised by the parties.

that defendant Corrections Officer Hickman ("Hickman") give him permission to seek medical attention. Hickman refused this request, and told the plaintiff to close his cell door. She also refused a second request, even though she was aware of the plaintiff's medical condition, and again ordered the plaintiff to close his cell door and warned him that she would issue a disciplinary report. Calca was upset and told Hickman to "do what you have to". Hickman then slammed the plaintiff's cell door and gave him a disciplinary ticket for failing to obey a direct order. The plaintiff then took a nitroglycerin pill, his second that morning. After taking the pill, Calca walked to the officer's station to tell Hickman that the medical staff had instructed him to "go down to medical" whenever he took two nitroglycerine pills. Hickman denied the plaintiff's request to go to medical and told the plaintiff to lock up immediately. The plaintiff then requested an inmate grievance form. Defendant Corrections Officer Ennis ("Ennis") was also present at that time. When the incident was investigated by the Lieutenant in charge, Hickman claimed that the plaintiff had threatened her, and Ennis supported Hickman's account. At that point, the Lieutenant ordered that the plaintiff be placed in segregation, where he was held for fifteen days. The Lieutenant telephoned for extra officers to move Calca to segregation, and about 10 to 20 officers came to do so. About one half-hour after being placed in segregation, Calca saw a

Lieutenant, and requested medical attention. In response to this request, the Lieutenant called the nurse. The nurse came to see Calca in segregation, checked his blood pressure, and treated him.

On May 9 or 10, 1998, Hickman left her assigned post sometime during the night to go to the plaintiff's cell, where she kicked his cell door and yelled that "she was going to get" the plaintiff, and she shouted an obscenity at him. This incident was a result of Hickman's being angry that the plaintiff had received punishment of only fifteen days in segregation as a result of the prior incident. The plaintiff filed a formal complaint about this incident. The plaintiff was later transferred to a different facility because of the incidents with Hickman.

II. Legal Standard

Dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted is not warranted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The task of the court in ruling on a Rule 12(b)(6) motion "is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof."

Ryder Energy Distribution Corp. v. Merrill Lynch Commodities Inc., 748 F.2d 774, 779 (2d Cir. 1984) (internal quotes and citation omitted). The court is required to accept as true all factual allegations in the complaint and must draw all reasonable inferences in favor of the plaintiff. See Hernandez v. Coughlin, 18 F.3d 133, 136 (2d Cir. 1994). However, "[w]hile the pleading standard is a liberal one, bald assertions and conclusions of law will not suffice." Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996). See also DeJesus v. Sears, Roebuck & Co., Inc., 87 F.3d 65, 70 (2d Cir.), cert. denied, 519 U.S. 1007 (1996)("A complaint which consists of conclusory allegations unsupported by factual assertions fails even the liberal standard of Rule 12(b)(6)."); Furlong v. Long Island College Hosp., 710 F.2d 922, 928 (2d Cir.1983) (noting that while "Conley permits a pleader to enjoy all favorable inference from facts that have been pleaded, [it] does not permit conclusory statements to substitute for minimally sufficient factual allegations.").

III. Discussion

The defendants contend that the complaint should be dismissed because the plaintiff has failed to exhaust his administrative remedies.[2] The court agrees. Congress enacted

[2] The defendants also argue that the suit is barred by the Eleventh Amendment doctrine of sovereign immunity, but as each of the defendants is sued only in his or her individual capacity, and not in his or her official capacity, this

the Prison Litigation Reform Act ("PLRA"), which became effective in April, 1996, to require that prisoners exhaust all available administrative remedies before filing suit in federal court. The relevant section of the PLRA reads as follows: "No action shall be brought with respect to prison conditions under . . . any . . . Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a).

The phrase "with respect to prison conditions" is not defined by § 1997e. However, the term "civil action with respect to prison conditions" is defined in another section of the PLRA as "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison". 18 U.S.C. § 3626(g)(2) (West Supp. 2000). Although it would be inappropriate to "blindly import" the definition set forth in 18 U.S.C. § 3626(g)(2) into 42 U.S.C. § 1997e, Nussle v. Willette, 224 F.3d 95, 105 (2d Cir. 2000), it does appear appropriate to use § 3626(g)(2) as guidance in this case because the plaintiff does not claim excessive force or

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argument is inapposite. Further, the defendants argue that the claim against Keefe should be dismissed because he "has no knowledge of any of the claims raised in this case." The court need not address this argument, because it finds that the case should be dismissed for failure to exhaust administrative remedies.

assault. See id.. See also Mertens v. Hewitt Assocs., 508 U.S. 248, 260 (1993) ("language used in one portion of a statute . . . should be deemed to have the same meaning as the same language used elsewhere in the statute. . . ."); United Savings Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988) (noting that a "provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme – because the same language is used elsewhere in a context that makes its meaning clear").

Here, the plaintiff alleges that while he was confined, he was not permitted to attend religious services as he wished, he was denied non-emergency medical care he requested, and he was verbally abused by an officer. The plaintiff's medical situation was non-emergency because at the time the plaintiff requested medical treatment, he was, by his own account, able to walk about and talk without difficulty, and was feeling well enough to request a prisoner grievance form even after his third request for medical attention was denied and to make the Lieutenant in charge feel that extra correctional officers were needed to move him to segregation. Each of these allegations relates to "the conditions of confinement". See, e.g., Majid v. Wilhelm, 110 F. Supp. 2d 251, 256 (S.D.N.Y. 2000) (holding that an inmate's first amendment claim required exhaustion under the PLRA); Conde v. Young, No. 3:99CV253(DJS), 2000 WL 340748 (D. Conn. Jan. 31, 2000) (holding that a claim alleging

denial of medical care while imprisoned was within the scope of the PLRA). The Second Circuit has recently held that a complaint alleging intentional, violent assault by prison employees against an inmate does not concern "conditions of confinement", and is therefore not subject to the exhaustion requirement of § 1997e. See Nussle, 224 F.3d at 100 (section 1997e(a) "does not encompass particular instances of excessive force or assault"). However, "[a]ssault claims are distinguishable from claims concerning the adequacy of food, clothing, shelter and medical care." Peddle v. Sawyer, 62 F. Supp. 2d 12, 16 (D. Conn. 1999). See also Rodriguez v. Berbary, 992 F. Supp. 592, 593 (W.D.N.Y. 1998) ("[A]ssault claims are distinguishable from . . . claims regarding whether adequate food, clothing, shelter, and/or medical care was received.") Thus, Calca's claims come within the scope of the PLRA.

Although the plaintiff does not argue this point in his opposition to the motion to dismiss, there is a split of authority among the district courts of the Second Circuit, as well as among the circuits themselves, as to whether a prisoner must exhaust his administrative remedies, as required by the PLRA, when he is seeking only monetary damages.[3] One line of

[3] The Second Circuit has noted this disagreement among the courts without deciding the issue. See, e.g., Liner v. Goord, 196 F.3d 132, 135 (2d Cir. 1999) ("The law concerning the PLRA's exhaustion requirement is in great flux."); Snider v.

cases reasons that exhaustion is not required when the administrative process available does not provide, even to a successful complainant, the type of relief sought, e.g. money damages. See, e.g., Rumbles v. Hill, 182 F.3d 1064 (9th Cir. 1999) (PLRA does not require exhaustion if administrative process does not offer relief requested); Garret v. Hawk, 127 F.3d 1263 (10th Cir. 1997) (same); Whitley v. Hunt, 158 F.3d 882 (5th Cir. 1998) (same).

A second line of cases acknowledges that Congress intended for the PLRA to be broad in scope, in order to effectively address the problem of prisoner cases flooding the dockets of the district courts, and that the exhaustion requirement applies, as the plain language of the statute suggests, to all actions, regardless of the sort of remedy sought. See, e.g., Majid, 110 F. Supp. 2d at 257 (collecting cases and holding that the plain language of the PLRA "mandates exhaustion even in those cases where a prisoner seeks relief that is unavailable through the administrative process"); Beeson v.

Dylag, 188 F.3d 51, 55 (2d Cir. 1999) (noting that "it is far from certain that the exhaustion requirement of 42 U.S.C. § 1997e(a) applies to deliberate indifference claims . . . where the relief requested is monetary and where the administrative appeal, even if decided for the complainant, could not result in a monetary award); Snider v. Melindez, 199 F.3d 108, 113 n. 2 (2d Cir. 1999) (recognizing that "there is a disagreement among courts over whether the exhaustion requirement of Section 1997e(a) applies where administrative remedies are unable to provide the relief that a prisoner seeks in his federal action").

Fishkill Corr. Facility, 28 F. Supp. 2d 884, 889 (S.D.N.Y. 1998) (Congress intended to "impose one uniform standard requiring prisoners to pursue their claims initially through the administrative process, without regard to the nature or extent of the relief offered by that process"), overruled on other grounds by Nussle, 224 F.3d at 100; Santiago v. Meinsen, 89 F. Supp. 2d 435, 440 (S.D.N.Y. 2000) (finding that excepting claims for money damages from § 1997e(a) "would frustrate congressional intent as the exhaustion requirement could easily be bypassed by inmates simply by adding a claim for monetary relief"); Booth v. Churner, 206 F.3d 289, 299-300 (3d Cir. 2000) (finding that PLRA requires exhaustion even where claim is for money damages not available through administrative process); Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 535 (7th Cir. 1999) (same); Lavista v. Beeler, 195 F.3d 254, 256-57 (6th Cir. 1999) (same); Alexander v. Hawk, 159 F.3d 1321, 1325 (11th Cir. 1998) (same).

The court finds the second line of cases persuasive. The plain language of § 1997e mandates that a prisoner with a grievance concerning the conditions of his or her confinement must avail him or herself of all administrative remedies before filing suit in federal court. The mere fact that a prisoner makes a claim for money damages does not necessarily mean that his or her claim can not be resolved by administrative proceedings, thereby accomplishing in that case Congress' goal

of decreasing litigation in the federal courts.

Calca was in the custody of the DOC when the incidents he complains of occurred. The court takes judicial notice of State of Connecticut Department of Correction Administrative Directive Number 9.6 effective August 12, 1994, entitled Inmate Grievances (the "Directive").[4] The Directive sets out the procedures that an inmate must follow when he or she has a complaint. The Directive governs, inter alia, "[i]ndividual employee or inmate actions including any denial of access to the Inmate Grievance Procedure", and all other matters "relating to access to privileges, programs and services, conditions of care or supervision and living unit conditions". Directive 9.6, ¶¶ 6.A.3, 6.A.5.. All of the plaintiff's allegations concern matters which are governed by the Directive.

There is a specific and detailed process which must be followed by an inmate who wishes to file a grievance, set forth in ¶ 10. The grievance must be in writing, on a form which is made available to all inmates, and must be filed within 30 days of the incident complained of. Any grievance which is rejected for any reason may be appealed; there are three levels of review provided. Medical grievances, such as Calca's complaint that he was denied care for his heart condition, are treated

[4] A copy of the Directive is attached to the defendants' memorandum in support of the motion to dismiss.

specially, and are processed by a designated Health Services Grievance Coordinator. There is also a provision for emergency grievances.

The plaintiff does not allege that he has exhausted his administrative remedies by pursuing the inmate grievance procedure provided for in the Directive. Calca alleges with respect to the May 1998 incident that he filed a formal complaint. As to the other two incidents, he does not allege that he ever filed a grievance form of any kind. However, even with respect to the May 1998 incident he failed to allege that he appealed any denial of a grievance. The only possible claim the plaintiff makes in this regard is in the form of the second page only of a letter, apparently written by the plaintiff to his attorney, which is attached to the plaintiff's opposition to the motion to dismiss, which reads in part as follows: "Just wanted to let you know that this was all attempted to be resolve[d] within the institution, to no avail. Every attempt was never even acknowledged." Pl. Memo. Obj. to Mot. to Dismiss, Exh. B. This statement does not amount to a sufficient allegation that the plaintiff exhausted his administrative remedies, as it is too vague and conclusory, particularly as a response to the defendants' submission of the Directive in support of their motion to dismiss. See Edwards v. Tarascio, No. 3:97CV2410(CFD), 2000 WL 306607 (D. Conn. Feb. 22, 2000) ("[A]lthough the plaintiff has attached to his

complaint correspondence concerning the allegedly unlawful conduct by prison officials, there is no indication that the plaintiff ever utilized the administrative grievance procedures that are available to prisoners in Connecticut to address the type of conduct at issue in this case.").

"Absent exhaustion of administrative remedies, the claims are not cognizable." McNatt v. Unit Manager Parker, No. 3:96CV1397(AHN), 2000 WL 307000, at * 11 (D. Conn. Jan. 18, 2000). The plaintiff has not sufficiently alleged that he exhausted his administrative remedies as to any of the claims in the complaint before filing this action. Therefore, this case should be dismissed.

IV. Conclusion

For the reasons set forth above, the defendants' Motion to Dismiss [Doc. # 19] is hereby GRANTED without prejudice to the plaintiff refiling this action after he exhausts his administrative remedies.

The Clerk shall close this case.

It is so ordered.

Dated this 8th day of March, 2001, at Hartford, Connecticut.

Alvin W. Thompson
United States District Judge