

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STEVEN KARL EDWARD BRADFORD *
Plaintiff *
v * Civil Action No. WDQ-13-2506
JASON CLEM, *et al.* *
Defendants *

MEMORANDUM OPINION

Pending is Defendants' Motion to Dismiss or for Summary Judgment (ECF No. 13) which is opposed by Plaintiff (ECF Nos. 18, 20-21). Also pending are Plaintiff's Motions for Appointment of Counsel (ECF No. 19), to Compel Discovery (ECF No. 23), and to Stay (ECF No. 18).¹ No hearing is necessary. *See* Local Rule 105.6 (D. Md. 2011). For the following reasons, the Defendants will be granted summary judgment, and the Plaintiff's motions will be denied.

Plaintiff Steven Karl Edward Bradford is a prisoner confined at Patuxent Institution. Defendants Dr. Jason Clem and Physician's Assistant Carol Oltman are medical care providers at Eastern Correctional Institution ("ECI") where Bradford was incarcerated at all times relevant to the Complaint.

Bradford states that on November 2, 2004, he sustained fractures to the floor of his left eye socket with severe damage to the left intraorbital nerve.² The damage to Bradford's eye resulted in the development of severe chronic pain in the left side of his face, migraines, and

¹ Bradford also moves "in opposition to Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment." (ECF No. 20). As this filing was incorrectly docketed as a motion, rather than an opposition, it will be denied.

² The injuries to Bradford's eye were sustained in a fight with another inmate.

double vision upon upward gaze. He states that if he does not receive adequate medication to treat his chronic pain and migraine, he is unable to engage in normal daily activities. Bradford states that a specialist at the Wilmer Eye Institute, Dr. Michael Grant, told him that the injuries to his eye are more than likely permanent. ECF No. 1 at 3-4.

On August 19, 2010, Bradford was seen by Dr. Cornell Shelton, a specialist at Bon Secours Hospital in Baltimore, Maryland who increased the dosage of Bradford's prescription for Tramadol and added a Depakote prescription to address Bradford's nerve pain and migraines. On November 18, 2010, Bradford went to see Dr. Shelton for follow-up. Bradford informed Dr. Shelton that the medications provided in August gave him some relief, but he was still experiencing significant pain. Shelton then prescribed Lyrica to address Bradford's nerve pain. Bradford states that for two years he remained on a regimen of Tramadol,³ Depakote,⁴ and Lyrica⁵ with adequate pain relief, which enabled him to engage in normal daily activities. *Id.* at 4-5.

Bradford states that he was regularly seen in a chronic care clinic at ECI which is reserved for inmates with serious medical issues such as chronic pain, asthma, hypertension, or cancer. Before ECI's change in contracted health care providers on July 1, 2012, Bradford states that it was the practice for the chronic care doctor to evaluate Bradford and re-order this pain medication regimen. When the change in health care providers occurred, the doctor who was

³ Tramadol is a narcotic-like pain reliever used to treat moderate to severe pain. *See* <http://www.drugs.com/tramadol.html>.

⁴ Depakote is an anti-seizure medication that is used to treat seizures, treat manic episodes in bipolar disorder, and prevent migraine headaches. *See* <http://www.drugs.com/depakote.html>.

⁵ Lyrica is an anti-epileptic drug that slows impulses in the brain that cause seizures and affects chemicals in the brain that send pain signals across the nervous system. *See* <http://www.drugs.com/lyrica.html>.

treating Bradford no longer worked in the chronic care clinic and, as a result, Bradford was not seen in the usual 90-day period for evaluation and prescription renewal. *Id.* at 5-6.

On August 1, 2012, Bradford submitted a request to medical staff for renewal of his pain medications, because the prescriptions were due to expire and he had not been seen in the chronic care clinic. Six days later, Bradford was seen in the medical department by Oltman who listened to his heart and respiration, but asked no questions regarding his level of pain. Although Bradford claims Oltman told him that all of his prescriptions had been renewed, Bradford later discovered that only the Lyrica prescription was renewed. Bradford alleges that at the time this occurred the three medications he was taking--Depakote, Lyrica, and Tramadol--were adequately addressing his chronic pain. Despite Bradford's well-documented pain issues, however, Oltman allegedly failed to renew his prescriptions for Depakote and Tramadol, and did not provide Bradford with substitute medications. *Id.* at 7-8.

On August 18, 2012, Bradford took his last doses of Depakote and Tramadol. He states that after these two medications were no longer available to him, his pain increased significantly. On August 21, 2012, Bradford contacted medical staff to inform them of the significant increase in his pain and request medication to alleviate it. Bradford claims that his sick call request was ignored. On August 22, 2012, Bradford states that he wrote a letter to the medical director, Dr. Jason Clem, informing him that he was experiencing significant pain due to the failure to renew his prescriptions for Depakote and Tramadol. Bradford alleges that this letter was also ignored. *Id.* at 8-9.

Bradford states that he continued to contact Clem to request his assistance in letters dated September 3 and 4, 2012. Also, on September 4, 2012, Bradford sent "an emergency grievance" to the Warden's office requesting that she intervene on his behalf. On the following day,

Bradford started receiving Depakote, and on September 6, 2012, he began receiving Tramadol. He states that he was forced to go without Depakote and Tramadol for two weeks, which caused him to suffer pain needlessly. *Id.* at 9-10.

In response to Bradford's grievance filed with the Warden, on September 13, 2012, he was called to the medical unit to discuss the matter with the charge nurse, Jen Austin. Bradford claims that Austin apologized to him for the delay in renewing his medication and claimed that Oltman did not do so when Bradford was seen because she lacked the necessary license. Austin asked Bradford to withdraw his grievance in light of the fact that he was currently receiving all of his medication, but Bradford declined, stating that he wanted an official response regarding the matter and intended to pursue it in court. Bradford claims that Austin became belligerent and accused him of not really wanting the medication, only a legal cause of action. Bradford further alleges that Austin claimed there was "a lot of paperwork" involved in getting Bradford's prescriptions renewed. *Id.* at 10 – 11.

Defendants admit that when Oltman saw Bradford on August 7, 2012 in response to his sick call request, Oltman only submitted a renewal request for Bradford's Lyrica prescription--and did not request renewal of his Tramadol and Depakote prescriptions--because she does not have a license to prescribe narcotic class medications. ECF No. 13, Ex. 2 at 94. Oltman did, however, make a request for Bradford to be seen by another provider. *Id.* Ex. 3.

Bradford was seen again on September 4, 2012 by Judith Hearthway, Nurse Practitioner, for renewal of his Tramadol and Depakote prescriptions. *Id.* Ex. 2 at 18. On that date, Bradford was provided with prescription renewals for both medications which began September 4, 2012 and continued through January 4, 2013. *Id.* Defendants allege that between August 17, 2012--the date Bradford's prescriptions expired--and September 4, 2012, there is no record of Bradford

attempting to contact medical staff to inform them that he was experiencing a significant increase in pain, nor did Bradford tell Hearthway about an increase in pain when he was seen on September 4, 2012. *Id.* at 18-94. Defendants further allege that the brief interruption in Bradford's medication was not the result of any intentional conduct on their part. *Id.* Exs. 1-3.

Plaintiff's motions

Bradford moves for appointment of counsel, stating that he is unable to afford counsel and that his incarceration will limit his ability to effectively litigate this matter. ECF No. 19. Federal district court judges have discretionary power to appoint counsel under 28 U.S.C. § 1915(e)(1) when an indigent claimant presents exceptional circumstances. *See Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1975); *see also Branch v. Cole*, 686 F.2d 264, 266 (5th Cir. 1982). Upon careful consideration of the motions and previous filings by Bradford, the Court finds that he has demonstrated the ability to either articulate the legal and factual basis of his claims himself or secure meaningful assistance in doing so. No hearing is necessary to the disposition of this case, and there are no exceptional circumstances to warrant the appointment of counsel under §1915(e)(1). The Motion for Appointment of Counsel will be denied.

Bradford also filed Motions to Stay Defendants' Motion to Dismiss or for Summary Judgment and to Compel Discovery. ECF Nos. 18, 23. He requests a stay, because he has served interrogatories on counsel to which they had thirty days to respond. ECF No. 18. In his Motion to Compel, Bradford seeks to compel Defendants to answer the interrogatories, because the reason they gave for not providing a response was inadequate. ECF No. 23.

Local Rule 803.1 (D. Md. 2011) provides that "discovery shall not commence until the issuance of a Scheduling Order." Also, under Federal Rule of Civil Procedure 26(d)(1), "a party may not seek discovery from any source before the parties have conferred as required by Rule

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