

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

STEVEN GRAHAM, )  
 )  
 Plaintiff )  
 )  
 v. ) Civil No. 95-0172-B  
 )  
 JOSEPH LEHMAN, et al., )  
 )  
 Defendants )

***RECOMMENDED DECISION***

On March 6, 1996, the undersigned issued a recommendation that the Court grant the Motion for Summary Judgment filed by two of the named Defendants in this action, Defendants Welch and Beverly. The same day, an Order issued directing that the Court would consider entering summary judgment for the remaining Defendants *sua sponte*, in light of the fact that “these Defendants would, for the most part, rely upon Defendants Welch and Beverly to illuminate the factual circumstances surrounding Plaintiff’s Complaint.” Order at 1 (March 6, 1996). Plaintiff was directed to respond to the “motion” for summary judgment within 10 days.

Plaintiff thereafter sought an enlargement of time, as well as the assistance of appointed counsel, for the reason that he found it difficult to respond to the motions for summary judgment. Accordingly, the Court set the matter for hearing at the Maine State Prison, where Plaintiff is an inmate. Hearing was had on April 8, 1996, at which time Plaintiff was afforded an opportunity to present evidence and argument in support of his position. Further, Plaintiff was afforded 10 days following the hearing to supplement his response, and the Court indicated that it would reconsider the Recommended Decision issued on Defendants Welch and Beverly’s Motion for Summary Judgment, together with the Recommended Decision to be issued as to the remaining Defendants.

### *Discussion*

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

However, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at 30 (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

Defendants Welch and Beverly established the following factual scenario in their original Motion for Summary Judgment:

### *Statement of Facts*

1. The plaintiff, Steven Graham, suffers from Type I Diabetes Mellitus, a metabolic disease in which loss of pancreatic insulin production results in excessively high blood sugar levels if not appropriately treated. *Beverly Aff.*, ¶ 6.

2. Treatment for Steven Graham's condition consists of insulin, administered either by injection or orally, complemented by diet control and exercise. *Beverly Aff.*, ¶ 6.

3. Throughout Steven Graham's incarceration at the Maine State Prison, the medical staff has engaged in ongoing, conscientious, and aggressive efforts to control his blood sugars. Mr. Graham's blood sugar levels have been routinely checked, and have been controlled by adjustments to his insulin therapy and the administration of other medications. *Beverly Aff.*, ¶¶ 7, 9.

4. Steven Graham has also been adequately educated regarding the need for, and the methods of, dietary control of his diabetes. He has attended a diabetes education workshop conducted by a nutrition consultant. That same consultant has prepared a daily meal plan for Mr. Graham, which Mr. Graham reviewed and which provided him with adequate guidance for the selection of a diet appropriate for his condition. Mr. Graham has also received "exchange lists" which provide sound and appropriate advice for self-management by diabetics on topics including food selection and food quantities. *Beverly Aff.*, ¶¶ 8, 10.

5. The insulin therapy and dietary education provided to Steven Graham have at all times been sound and sufficient. The medical professional staff at the Maine State Prison has not ignored Mr. Graham's complaints. The medical attention received by Mr. Graham at least equals, if it does not exceed, the amount and quality of medical attention typically available to non-incarcerated persons in the public at large. Furthermore, with respect to diet, the information

provided to Mr. Graham is both appropriate and sufficient, and it equals what is available to non-incarcerated diabetics who are responsible for self-management. *Beverly Aff.*, ¶ 11.

6. The Maine State Prison at Thomaston, where Steven Graham is incarcerated, has a food service operation which offers an unusually great variety of food choices from which the general inmate population may choose their foods. *Welch Aff.*, ¶ 4.

7. The menus offered in the cafeteria at the prison in Thomaston are reviewed and approved by a nutrition consultant and registered dietician who ensures, among other things, that the food choices available are sufficient to meet the nutritional needs of diabetics among the inmate population. *Welch Aff.*, ¶ 5.

8. The practice of the Maine State Prison is not to provide diabetics among the inmate population at Thomaston with individualized food trays, but rather to provide adequate food choices for them, and to provide them with sufficient education to allow them to effectively manage their own diets. *Welch Aff.*, ¶ 6.

9. Since September, 1994, none of the several diabetics in the Maine State Prison other than Steven Graham have reported any difficulty in obtaining appropriate diabetic food choices. *Welch Aff.*, ¶ 7.

10. Steven Graham has been a noncompliant patient in several respects. He has, on various occasions, refused to take insulin as prescribed, to present for blood sugar checks as required, to take other medication as prescribed, and to comply with dietary recommendations. *Beverly Aff.*, ¶ 12.

### *Legal Analysis*

Defendants sought summary judgment on the issue of qualified immunity, which asks whether their actions violated Plaintiff's "clearly established . . . rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Court stated at the time:

We see no need to elaborate upon the qualified immunity analysis in this case. Plaintiff's claim of inappropriate medical care rises to the level of a constitutional violation only, as Defendants argue, if they exhibited "deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). "The courts have consistently refused to create constitutional claims out of disagreements between prisoners and doctors about the proper course of a prisoner's medical treatment." *Watson v. Caton*, 984 F.2d 537, 540 (1st Cir. 1993).

Rec. Dec. at 4 (Mar. 6, 1996). We concluded that Plaintiff simply disagreed with Defendants' assessment that he should be responsible for monitoring his own diet, and that such a disagreement is precisely the type of claim that does not rise to the level of a constitutional violation.

The first issue at this juncture is whether Plaintiff's recent submissions have "plac[ed] at least one material fact in dispute," *Anchor Properties*, 13 F.3d at 30 (citation omitted). As to Defendants Beverly and Welch, Plaintiff has made no attempt to do so. It is uncontroverted that medical services have been provided to Plaintiff, and that the food choices offered to Plaintiff are appropriate to his needs. It is further uncontroverted that Plaintiff has been educated with respect to the need and manner for controlling his blood sugar levels through diet. Accordingly, summary judgment remains appropriate as to Defendants Beverly and Welch, and is appropriate as well with respect to Defendant Lorenz, to the extent Plaintiff's claims implicate her role as a nurse at the Maine State Prison.

Remaining for resolution are Plaintiff's claims against Commissioner Lehman, Warden Magnusson, Grievance Officer Farrington, and Nurse Lorenz in her administrative capacity. As to

these Defendants, it is Plaintiff's argument that he has been repeatedly disciplined for infractions that occurred solely as a result of his diabetes, and that Defendants have been unwilling to make accommodation. Indeed, Plaintiff's exhibits are replete with examples of disciplinary action taken against Plaintiff for his failure to, for example, complete assigned work or report for medication. There is further evidence that Plaintiff was transferred to segregation and refused craft room privileges as a result of his disciplinary record.

However, Plaintiff's exhibits do not provide evidence in support of the alleged direct connection between Plaintiff's diabetes and the disciplinary infractions. For example, Plaintiff alleges that he was disciplined for refusing to leave the mess hall as ordered, when his medical condition required that he eat. However, it is not apparent from the disciplinary records why Plaintiff could not have eaten earlier. In another example, Plaintiff was fired from his job assignment because, according to Plaintiff, he wished to attend church. This incident bears no relationship to this case.

Defendants, it is clear, see Plaintiff as attempting to use his diabetes as an excuse to seek preferential treatment. Plaintiff's exhibits include memoranda from Defendants Lehman, Magnusson, and Lorenz, some of which describe the services made available to Plaintiff, and the need for Plaintiff to accept some of the responsibility for utilizing those services. In none of the memoranda is there evidence of deliberate indifference to Plaintiff's medical needs. For this reason, summary judgment is also appropriate as to Defendants Lehman, Magnusson, Farrington, and Lorenz.

### *Conclusion*

Accordingly, I hereby recommend the Court GRANT Defendants Beverly and Welch's Motion for Summary Judgment, and ENTER summary judgment *sua sponte* on behalf of Defendants Lehman, Magnusson, Farrington, and Lorenz.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on September 30, 1996.