

Matter of Morrow v Wright

2010 NY Slip Op 30539(U)

March 3, 2010

Supreme Court, Albany County

Docket Number: 655-09

Judge: George B. Ceresia

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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of the Application of
JEFFREY MORROW,

Petitioner,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

LESTER WRIGHT, DEPUTY
COMMISSIONER/CHIEF OFFICER;
CORC CENTER OFFICE REVIEW COMMITTEE,

Respondents.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-09-ST0006 Index No.655-09

Appearances: Jeffery Morrow
 Inmate No. 02-A-0469
 Petitioner, Pro Se
 Attica Correctional Facility
 Box 149
 Attica, NY 14011-0149

Andrew M. Cuomo
Attorney General
State of New York
Attorney For Respondent
The Capitol
Albany, New York 12224
(C. Harris Dague,
Assistant Attorney General
of Counsel)

DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Attica Correctional Facility, has commenced the instant CPLR Article 78 proceeding to review an adverse grievance determination of the Central Office Review Committee (“CORC”) with regard to the adequacy of medical treatment provided to him in connection with his cervical spine and lumbar spine. In the grievance dated August 27, 2008, the petitioner requested that he be given a specific pain medication, that he be scheduled to see a neurologist and pain specialist, and that he receive an MRI. These requests stem (at least in part) from a neck injury that petitioner suffered on May 17, 2007 that resulted in nerve damage to his right arm, hand and finger and the left side of his face. The petitioner underwent a discectomy at C6-7 in November 2007. In June 2008 petitioner was diagnosed by Dr. Joseph M. Kowalski as having a collapsed disc in his lower back (L5-S1), and moderate prominent spondylosis. Dr. Kowalski recommended the course of treatment that petitioner requested in his grievance, including an MRI for his lower back, and a CAT scan for his cervical spine.

The grievance was denied by the Inmate Grievance Resolution Committee on September 9, 2008. The grievance determination recited as follows:

“This inmate has an appointment with a clinician very soon and all of his medical issues can be addressed at that time. Specialists make recommendations but the final determination of inmates medical needs are made by his primary care physician. Physicians here at Attica are fully aware of his medical issues.”

The petitioner appealed to the Superintendent, who also denied the grievance in a decision dated October 20, 2008 which recited as follows:

“You have been seen by the FHSD and pain medications have been prescribed. At this point, there is no evident medical need for referral for another MRI or referral to specialists. If such need becomes evident, these referrals will be made. You are appropriately being followed and treated by the FHSD.”

The petitioner then appealed to CORC, which denied the appeal in a decision dated November 29, 2008 which recited as follows:

“Upon full hearing of the facts and circumstances in the instant case, and upon recommendation of the Division of Health Services, the action requested herein is hereby accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

“CORC notes that the grievant was referred for an MRI on 6/16/08 and 7/21/08, however, both requests were denied by APS because other treatment options had not been attempted. Subsequently, the grievant began Physical Therapy (PT) in August of 2008, however, it was discontinued on 9/26/08 because the grievant indicated that it was not helping the pain. On 10/22/08, [he] saw the FHSD and had his prescription for Neurontin increased.

“CORC advises the grievant to follow the treatment plan outlined by Health Services. Contrary to the grievant’s assertions, CORC has not been presented with sufficient evidence to substantiate any malfeasance by staff.

“CORC asserts that, consistent with Health Services Policy Manual Item #1.21 - Health Care Referrals, the Facility Health Services Directors (FHSD) have the sole responsibility for providing treatment to the inmates under their care. The FHSDs have the responsibility of determining what outside health referrals are needed by the target population. Outside specialists may only make recommendations for treatment; however, the implementation of those recommendations is at the discretion of the FHSDs, based on their professional judgment.”

“Judicial review of administrative decisions denying inmate grievances is limited to

a determination of whether the challenged determination is irrational, arbitrary or capricious” (Matter of Harty v Goord, 3 AD2d 701, 702 [3rd Dept., 2004] quoting Matter of Cliff v Brady, 290 AD2d 895 [2002], lv denied, lv dismissed 98 NY2d 642 [2002]; Matter of Cliff v Eagen, 272 AD2d 687 [2000]; see also Matter of Clark v Fischer, 58 AD3d 932 [3rd Dept., 2009]). Phrased differently, “[t]o prevail, petitioner must demonstrate that the Central Office Review Committee's determination was arbitrary and capricious or without a rational basis” (Matter of Patel v Fischer, 67 AD3d 1193 [3rd Dept., 2009] citing Matter of Keesh v Smith, 59 AD3d 798, 798 [2009]; Matter of Green v Bradt, ___ AD3d ___, 2010 NY Slip Op 617 [3rd Dept., January 28, 2010]; Matter of Frejomil v Fischer, 68 AD3d 1371 [3rd Dept., 2009]; Matter of Matos v Goord, 27 AD3d 940, 941 [2006]).

Notably, “[a]s a dependent of the State, ‘[a prison inmate] is entitled to essential, not optimal, care’ (Matter of McLaughlin v Wing, 255 AD2d 954, 955), there being no ‘obligation to provide inmates with medically unnecessary services’ (Matter of Smith v Alves, 282 AD2d 844, 845)” (Matter of Jarvis v Pullman, 297 AD2d 842, 843 [3^d Dept., 2002]; see also Matter of Pittman v Portuondo, 307 AD2d 485, 485-486 [3^d Dept., 2003]). Moreover, a referral for further tests is required only if the Facility Health Services Director determines that it is necessary (see Matter of Davis v Goord, 7 AD3d 889, 890 [3^d Dept., 2004]). There is no evidence that this is the case here.

The record reveals that the petitioner has been closely followed by his primary care physician, who has engaged in a conservative mode of treatment. This includes a recommendation for physical therapy, which was prescribed in August 2008, as well as medication for pain relief. From the chronology submitted by the petitioner it is clear that

he has been seen on multiple occasions by facility medical staff for consultation and treatment. Pain medication was prescribed, albeit not necessarily the medications or dosages which the petitioner requested.

The Court finds that the petitioner did not present evidentiary support for his claim that he is not receiving adequate medical treatment, (see Ross v Goord, 262 AD2d 883, 884-885 [3d Dept., 1999], app dismissed 93 NY2d 1039 [1999], Held: The petitioner's conclusory allegations were insufficient to establish improper or inadequate medical treatment]). Nor has the petitioner demonstrated a deliberate indifference to his serious medical needs in violation of the Eighth Amendment of the United States Constitution (see Matter of Scott v Goord, 32 AD3d 638, 638-639 [3rd Dept., 2006]; Ross v Goord, 262 AD2d 883, 884-885 [3d Dept., 1999], citing Matter of Allah v White, 243 AD2d 913 [3d Dept., 1997]). As such, the petitioner failed to demonstrate that the denial of his grievance was affected by an error of law or was arbitrary and capricious and/or that the physician's assessments in that regard were incorrect (see Matter of Davis v Goord, 7 AD3d 889, 889-890 [3d Dept., 2004], citing Matter of Singh v Eagen, 236 AD2d 654, 655 [1997]; see also Matter of Scott v Goord, *supra*).

During the pendency of the instant proceeding the petitioner made a motion to submit supplemental pleadings relating to events that occurred since commencement of the instant proceeding. He indicates that on September 28, 2009 he had an MRI of his left knee¹, which revealed a torn left medial meniscus; and an MRI of his lumbar spine, which was positive

¹It appears that the knee injury is the result of a fall which occurred subsequent to commencement of the instant proceeding.

for degenerative disc disease L5-S1 with disc herniation at L5-S1. His doctor, G. Coniglio, M.D., recommended an epidural steroid injection with regard to the disc herniation. Records submitted by the petitioner indicate that on November 4, 2009 he underwent arthroscopy of his left knee, and that on the same date he received an epidural steroid injection into his spine. The Court finds that the papers submitted on the motion are of an evidentiary nature, not requiring incorporation into a supplemental pleading. For this reason, the motion will be denied. The Court has, however, reviewed and considered the papers which were submitted by the petitioner in connection with the motion, and finds that they are supportive of CORC's determination that petitioner's medical needs are being adequately addressed.

The Court finds that the determination was not made in violation of lawful procedure, is not affected by an error of law, and is not irrational, arbitrary and capricious, or an abuse of discretion. The Court concludes that the petition must be dismissed.

Accordingly, it is

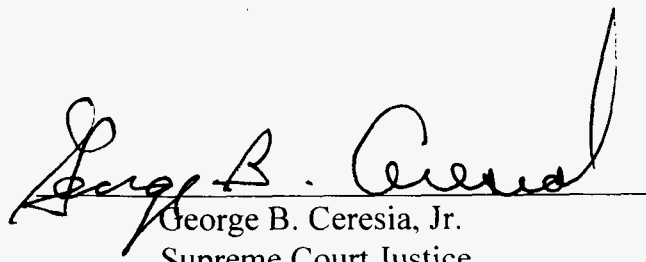
ORDERED, that the motion to submit a second supplemental pleading is denied; and it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the Respondent. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER

Dated: March 3, 2010
Troy, New York



George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated January 28 2009, Petition, Supporting Papers and Exhibits
2. Respondent's Answer dated August 6, 2009, Supporting Papers and Exhibits
3. Petitioner's Reply to Respondent's Answer, dated September 9, 2009
4. Petitioner's Notice of Motion dated December 15, 2009, Supporting Papers and Exhibits