

Matter of Cozart v Fischer

2011 NY Slip Op 33048(U)

November 9, 2011

Sup Ct, Albany County

Docket Number: 3389-11

Judge: Jr., George B. Ceresia

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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of the Application of HARRY COZART,

Petitioner,

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

-against-

BRIAN FISCHER, COMMISSIONER, NEW YORK
STATE DEPARTMENT OF CORRECTIONAL
SERVICES,

Respondent.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI No. 01-11-ST2725 Index No. 3389-11

Appearances: Harry Cozart
 Inmate No. 04-B-0417
 Petitioner, Pro Se
 Great Meadow Correctional Facility
 P.O. Box 51
 Comstock, NY 12821

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The petitioner, an inmate at Great Meadow Correctional Facility, commenced the

instant CPLR Article 78 proceeding to review an adverse grievance determination of the Central Office Review Committee (“CORC”) with regard to prescriptive pain medication. Specifically, the petitioner alleges that he suffers from a great amount of pain from an old gunshot wound near his left iliac bone. Pain symptoms commenced during the first week of August 2009. The facility physician directed that the petitioner should do stretches and exercises to stem degeneration in this area. He was taken to Albany Medical Center, where he received a prescription for the pain medication Ultram. The medication was approved by Great Meadow Correctional Facility, and the prescription was renewed on a regular basis until September 30, 2010, when the facility physician prescribed Motrin instead.

On October 7, 2010 the petitioner filed a grievance with respect to failure to receive Ultram. The the Inmate Grievance Resolution Committee (“IGRC”) issued the following decision on November 3, 2010:

“Grievance is granted to the extent that grievant[’s] pain medication was changed by Dr. Karandy. If he has concerns or questions they may be addressed through sick call.”

Upon appeal, the Superintendent rendered the following determination:

“This grievance was investigated by supervisory staff, as a result of that investigation. I offer the following: The facility Health Services Director has reviewed inmate Cozart’s medical records and determined that Ultram is no longer appropriate for his medical condition.”

The petitioner then appealed to CORC, which upheld the Superintendent’s determination 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 denied. CORC upholds the determination of the Superintendent for the reasons stated.

“CORC notes that the grievant’s primary care provider determined that Ultram was no longer medically necessary, and that he prescribed Motrin 600 mg as an alternate. CORC asserts that, consistent with Health Services Policy Manual Item #1.43 -Speciality Care Referrals, the Facility Health Services Directors (FHSD) have the sole responsibility for providing treatment to the inmates under their care. CORC has not been presented with sufficient evidence to substantiate any malfeasance by staff.

“CORC notes that the grievant may write to whomever he wishes regarding this complaint.

“With respect to the grievant’s appeal, CORC advises the grievant that he may review, obtain copies and challenge the accuracy of his medical records in accordance with Health Services Policy Manual Item #4.10. CORC advises the grievant that the proper avenue to address medical concerns is via the sick call mechanism.”

Judicial review of administrative decisions denying inmate grievances is limited to whether the determination is “‘irrational, arbitrary or capricious or affected by an error of law’” (see Matter of Hernandez v Fischer, 79 AD3d 1544, 1546 [3rd Dept., 2010], quoting Matter of Bermudez v Fischer, 71 AD3d 1361, 1362 [2010] lv denied 15 NY3d 702, 2010]; see also Matter of Green v Bradt, 69 AD3d 1269 [3rd Dept., 2010]; Matter of Clark v Fischer, 58 AD3d 932 [3rd Dept., 2009]).

“As 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 [3d Dept., 2002]; see also Matter of Pittman v Portuondo, 307 AD2d 485, 485-486 [3d Dept., 2003]).

The Court finds that the petitioner did not present evidentiary support for his claim that he is not receiving adequate medical treatment, and specifically that he requires Ultram

pain medication rather than Motrin (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)). 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).

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.

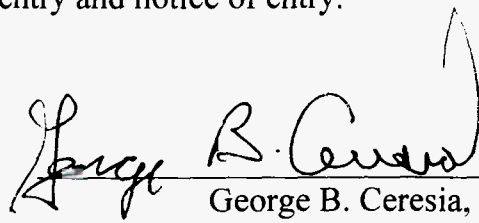
Accordingly, it is

ORDERED 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: November 9, 2011
Troy, New York


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. **Order To Show Cause dated May 27, 2011, Petition, Supporting Papers and Exhibits**
2. **Respondent's Answer dated July 28, 2011, Supporting Papers and Exhibits**