IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FAYGIE FIELDS, and BRIAN NELSON,	)	
Plaintiffs,	)	
vs.	)	**Civil No. 00-528-DRH**
DONALD SNYDER, JR., et al.,	)	
Defendants.	)	

REPORT AND RECOMMENDATION

PROUD, Magistrate Judge:

Defendants Snyder, Elyea, Hopkins, DeTella, Welborn, Rhodes and the Illinois Department of Corrections are before the Court seeking summary judgment pursuant to Federal Rule of Civil Procedure 56(b). **(Docs. 151, 152 and 157).** Plaintiffs Fields and Nelson have filed a response, including their own statement of facts. **(Doc. 167).** Defendants in turn have filed a reply. **(Doc. 170).** Pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (C), this Report and Recommendation is respectfully submitted to the District Court.

The Remaining Claims

On July 6, 2000, Ashoor Rasho, Faygie Fields, Brian Nelson and Robert Boyd, Illinois Department of Corrections inmates housed at Tamms Correctional Center, who are allegedly mentally ill, filed the above-captioned action. **(Doc. 1).** At this juncture, only plaintiffs Fields and Nelson remain. Furthermore, class action status has been denied. **(Doc. 85).** Of the original seven claims, only five claims remain against the aforementioned seven remaining defendants[1]:

Count I: The individual defendants were/are deliberately indifferent to

[1]Dr. Marvin Powers and Dr. Rakesh Chandra have been dismissed. **(Doc. 118).**

plaintiffs' serious mental health needs in violation of the Eighth and Fourteenth Amendments.

Count II: Unconstitutional conditions of confinement for seriously mentally ill inmates imposed by the individual defendants constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

Count V: The Department of Corrections discriminated against the plaintiffs[2] on account of their serious mental illness in violation of the Rehabilitation Act, 29 U.S.C. § 794.

The plaintiffs seek declaratory relief (Count VI), as well as injunctive relief, and compensatory[3] and punitive damages (Count VII). **(Doc. 1).**

Arguments for Summary Judgment

Defendants argue:

1. Defendants are not deliberately indifferent to the plaintiffs' conditions of confinement or mental health needs, relative to Counts I and II.

2. The Illinois Department of Corrections cannot violate the Rehabilitation Act, as alleged in Count V, as it has no knowledge that the plaintiffs are suffering from serious mental illnesses.

3. Plaintiffs are not "otherwise qualified" within the meaning of the Rehabilitation Act.

4. There is no on-going violation which would justify declaratory and/or injunctive relief.

(Docs. 151 and 152).

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[2]Plaintiff Fields is the only plaintiff prosecuting this claim. **(Doc. 167, p. 46 fn 10).**

[3]Plaintiffs appear to disavow any claim for compensatory damages for *past* failures. Plaintiffs state: "The plaintiffs do not pray for damages for the defendants' *past* failures to remove them from C-Max conditions of confinement. Rather, the plaintiffs allege an *ongoing* failure on the defendants' part to address the *continuing* deterioration of their mental health status by continuing to confine them in the harsh, isolating conditions of C-Max." **(Doc. 167, p. 36 (emphasis in the original)).** However, this Court considers this an unintended drafting error.

Federal Rule of Civil Procedure 56

Summary judgment is appropriate under Federal Rule of Civil Procedure 56 where "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);** ***see Celotex Corp. v. Catrett*****, 477 U.S. 317, 322-323 (1986).** The evidence is construed in the light most favorable to the non-moving party and all justifiable inferences are drawn in favor of that party. ***See Anderson v. Liberty Lobby, Inc.*****, 477 U.S. 242, 255 (1986).**

Once the moving party has produced evidence to show that he or she is entitled to summary judgment, the non-moving party must affirmatively demonstrate that a genuine issue of material fact remains for trial. ***Johnson v. City of Fort Wayne*****, 91 F.3d 922, 931 (7th Cir. 1996).** In responding to a summary judgment motion, the non-moving party may not simply reiterate the allegations contained in the pleadings, more substantial evidence must be presented at this stage. "The object . . . is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit." ***Lujan v. National Wildlife Federation*****, 497 U.S. 871, 888 (1990).** Moreover, a genuine issue of material fact is not shown by the mere existence of "some alleged factual dispute between the parties" **(*Anderson*, 477 U.S. at 247)**, or by "some metaphysical doubt as to the material facts, **(*Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986))**."

"The court's function is not to weigh the evidence but merely to determine if 'there is a genuine issue for trial.' We must ask whether 'there are genuine factual issues that can properly be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.'" ***First Bank & Trust v. Firstar Information Services*****, 276 F.3d 317, 321-322 (7th Cir. 2001) (internal citations to *Anderson* omitted).**

Analysis

Deliberate Indifference

Plaintiffs assert that they suffer from serious mental illnesses. More specifically, Fields allegedly suffers from schizophrenia, and Nelson allegedly suffers from severe major depressive disorder. **(Doc. 167, pp. 21-22 and Exhibits T and U).** In Count I plaintiffs allege that the defendants are deliberately indifferent to their serious mental health needs, in terms of treatment. They further allege in Count II that, in light of their mental illnesses, the conditions of confinement imposed by the defendants constitute cruel and unusual punishment. Counts I and II are essentially "two sides of the same coin," and the plaintiffs' mental health diagnoses are the linchpin of those claims.

Generally, the Eighth Amendment obligates prison officials to "provide humane conditions of confinement; . . . [to] ensure that inmates receive adequate food, clothing, shelter and medical care, and [to] 'take reasonable measures to guarantee the safety of the inmates.'" ***Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *see also Estelle v. Gamble*, 429 U.S. 97 (1976).** The Eighth Amendment's protections clearly extend to serious psychiatric and psychological afflictions. ***Sanders v. Sheahan*, 198 F.3d 626, 628 (7th Cir. 1999); *Maggert v. Hanks*, 131 F.3d 670, 671 (7th Cir. 1997).** Anything that affects a prisoner's quality of life in prison, including such things as terms of disciplinary or administrative segregation, the deprivation of exercise, adequate food and shelter, also falls within the ambit of "conditions of confinement." ***Witzke v. Femal*, 376 F.3d 744, 751 (7th Cir. 1004).**

> In evaluating Eighth Amendment claims, courts conduct both an objective and a subjective inquiry. The objective prong asks whether the alleged deprivation or condition of confinement is "sufficiently serious" so that "a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities." If the conditions complained of pass this threshold, courts then must determine the prison official's subjective state of mind; that is, whether "he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it."

***Whitman v. Nesic*, 368 F.3d 931, 934 (7th Cir. 2004) (internal citations to *Farmer v. Brennan* are omitted)).**

The Eighth Amendment is violated when an official exhibits "deliberate indifference"--when an official "knows of and disregards an excessive risk to inmate health or safety[;] the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." ***Farmer*, 511 U.S. at 837.** This standard is subjective, and is the equivalent of recklessness in the criminal law sense. ***Id.*** Mere negligence will not create liability, nor will the provision of medical treatment other than that preferred by the inmate. ***Estelle*, 429 U.S. at 107; *see also Burns v. Head Jailor*, 576 F. Supp. 618 (N.D. Ill. 1984).**

For Eighth Amendment purposes in the medical care context, the seriousness of a medical/psychiatric/psychological problem is gauged by such factors as the severity of the problem, the potential for harm if care is denied or delayed, and whether harm actually resulted from the lack of medical/psychiatric/psychological attention. ***See Burns*, 576 F.Supp. at 620.** This is an objective determination. ***Davis v. Jones*, 936 F.2d 971, 972 (7th Cir. 1991).** Liability will not attach where the injury appeared slight, but later turned out to be serious; however, where an injury appeared serious and later turned out to be slight, liability will attach--anything else would be gambling with another's health or life. ***Id.*** The ultimate determination regarding the seriousness of an injury is best left to a healthcare professional, or the seriousness of the injury must be so obvious that even a lay person would easily recognize the necessity for a healthcare professional's attention. ***Id.; see also Langston v. Peters*, 100 F.3d 1235, 1240 (7th Cir. 1996).**

Dr. Chandra, the Tamms psychiatrist, diagnosed Fields with malingering and

polysubstance dependency and a self-reported history of head injury; and Nelson as malingering and having an antisocial personality disorder. **(Doc. 157, Exhibit D, p. 4).** Dr. Chandra does not consider them to be "seriously mentally ill."[4] **(Doc. 157, Exhibit D, p. 3).** Defendants acknowledge that there are questions of fact regarding the "correct" diagnoses and whether plaintiffs have serious mental illnesses. **(Doc. 152, p. 13 fn 2).** Nevertheless, defendants argue that those defendants who are not mental health professionals relied upon what their experts told them about the plaintiffs' mental health status, therefore they cannot be said to have been deliberately indifferent. Defendants contend that Dr. Chandra (who is no longer a defendant) had the final say-so regarding the plaintiffs' diagnoses– not defendant Rhodes, who is a psychologist and who oversees mental health services for inmates at Tamms, and who supervises all mental health staff, *except psychiatrists*; not defendant Elyea, medical director for the Illinois Department of Corrections; and not defendant Hopkins, chief of mental health services for the Illinois Department of Corrections, who allegedly has "minimal involvement in mental health decisions, by reviewing the mental health files of the plaintiffs." **(*See* Doc. 152, pp. 17-19, and Exhibits C and D).**

Plaintiffs essentially attack the diagnoses offered by the defendants, the definition of a serious mental illness utilized by the Department of Corrections, the policies relating to housing and caring for the mentally ill at Tamms, and plaintiffs' claim that their experts' opinions are superior to those offered by the defendants and their experts. **(*See* Doc. 167).** Plaintiffs contend that the many questions of fact regarding all of those issues preclude summary judgment. Defendants counter that plaintiffs merely present conclusions, not supported by competent evidence of misdiagnoses. **(Doc. 170).** Whether plaintiffs' interdependent arguments and

[4]Defendants also offer evidence that other mental health experts confirmed these or similar diagnoses.

evidence fall like a house of cards remains to be seen, that will depend on how various questions of fact are determined.

Clearly, there are many questions of fact regarding the parties' experts and the plaintiffs' mental health status– all of which are beyond the Court's purview at this juncture. Nevertheless, this Court agrees with the defendants to a certain extent; plaintiffs have failed to present any evidence that it was unreasonable for those defendants with no expertise regarding mental health to rely upon the opinions of those with expertise who concluded the plaintiffs were not seriously mentally ill. A serious medical condition is one 'that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." ***Gutierrez v. Peters,* 111 F.3d 1364, 1373 (7th Cir.1997).** When experts cannot agree on a diagnosis, lay people cannot be expected to know which opinion to rely on.

Dr. Chandra's and Dr. Rhodes' affidavits indicate that Dr. Chandra bore responsibility for diagnosing plaintiffs. Still, the record is murky regarding the role and authority of defendants Elyea, Hopkins and Rhodes, all of whom appear to have sufficient professional expertise to gauge whether plaintiffs were mentally ill and/or whether Dr. Chandra's diagnoses were professionally reasonable. Defendants do no fully address each of those defendant's involvement and the chain of command. Therefore, in this Court's opinion, defendants Elyea, Hopkins and Rhodes cannot be granted summary judgment relative to Counts I and II.

Non-professionals' reliance on experts' opinions in these sorts of situations is not an absolute bar to liability. ***See Sanville v. McCaughtry*, 266 F.3d 724, 739 (7th Cir. 2001); and *Estelle v. Gamble*, 429 U.S. at 107-108.** However, there is absolutely no suggestion that defendant Snyder, as director of the Illinois Department of Correction, DeTella, as assistant director of the Illinois Department of Corrections, and Welborn, as warden of Tamms, had any

expertise regarding medicine or mental health. The evidence indicates that all contested decisions regarding treatment and conditions of confinement were premised upon the prison's experts' opinions. This Court cannot fathom how the defendants' merely knowing (because of this litigation) that the plaintiffs' experts contest those diagnoses amounts to deliberate indifference. Therefore, this Court recommends that defendants Snyder, DeTella and Welborn be dismissed from Counts I and II, as there is no evidence from which deliberate indifference can be inferred. It is also this Court's recommendation that summary judgment not be granted relative to defendants Elyea, Hopkins and Rhodes on Counts I and II.

The Rehab Act Claim

Count V alleges that the IDOC violated Section 504 of the Rehab Act, 29 U.S.C. § 794. To state a prima facie case, plaintiff Fields must allege: (1) that they are "handicapped individuals" under the Act; (2) that they are "otherwise qualified" for the benefit(s) sought; (3) that they were discriminated against solely by reason their handicap(s); and (4) that the program or activity in question receives federal financial assistance. ***Grzan v. Charter Hospital of Northwest Indiana*, 104 F.3d 116, 119 (7th Cir. 1997).** Defendants argue that Fields is not "otherwise qualified" for the benefit(s) sought. Defendants generally refer to plaintiff's behavioral/disciplinary problems, which are consistently used as the basis for precluding Fields from a host of prison perks and programs. **(*See* Doc. 152, pp. 14-15).** Plaintiff Fields views his behavioral/disciplinary problems as manifestations of his serious mental illness. From plaintiffs' perspective, defendants' policies, procedures and decisions regarding diagnosis, treatment and placement of mentally ill inmates rest on a shaky house of cards.

"Disability" is defined as "a physical or mental impairment that substantially limits one or more major life activities." **29 U.S.C. § 705.** The Rehab Act regulations provide a representative list, defining the term to include "functions such as caring for one's self,

performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." **45 C.F.R. § 84.3(j)(2)(ii).** ***Conley v. Gibson*****, 355 U.S. 41, 46 (1957).**

With regard to the assertion that plaintiffs are not "otherwise qualified", their Rehab Act claim is premised upon the following: (1) their being unjustifiably isolated by being sent to Tamms; (2) failure to accommodate their mental conditions by adjudicating their disciplinary charges without reference to their mental health records and by not assisting them in navigating the grievance process; (3) denying them access to programs, activities and services such as: contact with other prisoners, access to jobs, rehabilitation and educational programs, group therapy, outdoor exercise, communal religious programs, an adequate law library, art supplies and personal property, telephone privileges, and contact visits; (4) segregating some of them on an elevated security wing where it is chaotic, noisy and isolated, and where less mental health treatment is offered than elsewhere in Tamms.

"'Otherwise qualified' means that were [they] not handicapped, [plaintiffs] would have qualified for the program or treatment [they were] denied because of [their] handicap. 'An otherwise qualified person is one who is able to meet all of the program's requirements *in spite* of [their] handicap.'" ***Grzan*****, 104 F.3d at 120 (quoting *Southeastern Community College v. Davis*****, 442 U.S. 397, 406 (1979)).** Again, the linchpin of the claim is whether plaintiff Fields is malingering, as defendants ans their experts assert, or seriously mentally ill, as plaintiffs and their experts assert. Questions of fact remain regarding the "correct" diagnosis, therefore summary judgment cannot be granted. Consequently, this Court recommends that the motion for summary judgment be denied relative to the Rehab Act claim, Count V.

Injunctive Relief

Defendants consider plaintiffs' claim for injunctive relief, Count VII, to be improper, in that there is no on-going violation.

The scope of any injunction that could issue would be limited in accordance with 18 U.S.C. § 3626 and *Ex parte Young*, 209 U.S. 123, 155-156 (1908). *Ex Parte Young* provides an exception to Eleventh Amendment immunity, permitting suit against a state official to enjoin prospective action that would violate federal law, only when the state official is sued in his or her official capacity. ***Ameritech Corp. v. McCann*, 297 F.3d 582, 585-586 (7th Cir. 2002).**

> In *Verizon Maryland, Inc. v. Public Service Comm. of Maryland,* [535 U.S. 635 (2002)] the Court stated:
>
> > In determining whether the doctrine of *Ex Parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.

***Ameritech*, 297 F.3d at 587 (internal quotations and cites omitted; numerical citation to *Verizon Maryland* inserted).**

Although plaintiffs' complaint describes many incidents in the past, plaintiff clearly alleges ongoing violations. **(*See* Doc. 1, pp. 6-30 and 34; *see also* Doc. 167, p. 36).**

Only one of the defendants, Dr. Rhodes, remains in the employ of the Department of Corrections. Pursuant to Federal Rule of Civil Procedure 25(d), plaintiffs correctly assert that the current officials should be *automatically* substituted as follows: Roger E. Walker for director Donald Snyder; Richard Bard for assistant director George DeTella; Dr. Amy Ray for chief of medical service Dr. Dennis Hopkins; and Shelton Frey for warden George Welborn. **(Doc. 160, p. 2).** The formalities of substitution need not be done at this juncture, but will certainly be clarified before trial. ***See* Advisory Committee Notes in re Amendments to Fed.R.Civ.P.(d) (1).** Insofar as the defendants are sued in their official capacities, the names in the complaint have virtually no effect on issues presently under consideration.

Recommendation

For the aforestated reasons, it is the **RECOMMENDATION** of this Court that the defendants' motion for summary judgment **(Doc. 151)** be **GRANTED IN PART AND DENIED IN PART**. More specifically, this Court recommends: (1) defendants Donald N. Snyder, Jr., George E. DeTella and George Welborn be granted summary judgment relative to Counts I and II, as there is no evidence of deliberate indifference; (2) all other defendants should be denied summary judgment. If the District Court were to adopt this Court's recommendation, defendants Elyea, Hopkins, Rhodes and the Illinois Department of Corrections would remain as defendants, and Counts I, II and V would remain for trial.

DATED: January 24 , 2005

s/ Clifford J. Proud
CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE

NOTICE

PURSUANT to Title 28 U.S.C. §636(b) and Rule 73.1(b) of the Local Rules of Practice in the United States District Court for the Southern District of Illinois, any party may serve and file written OBJECTIONS to this Report and Recommendation/ Proposed Findings of Fact and Conclusions of Law within ten days of service.

Please note: **You are not to file an appeal as to the Report and Recommendation/Proposed Findings of Fact and Conclusions of Law**. At this point, it is appropriate to file **OBJECTIONS**, if any, to the Report and Recommendation/ Proposed Findings of Fact and Conclusions of Law. An appeal is inappropriate until after the District Judge issues an Order either affirming or reversing the Report and Recommendation/ Proposed Findings of Fact and Conclusions of Law of the U.S. Magistrate Judge.

Failure to file such OBJECTIONS shall result in a waiver of the right to appeal all issues, both factual and legal, which are addressed in the Report and Recommendation/Proposed Findings of Fact and Conclusions of Law. *Video Views, Inc. v Studio 21, Ltd. and Joseph Sclafani, 797 F.2d 538 (7th Cir. 1986).*

You should e-file/mail your OBJECTIONS to the Clerk, U.S. District Court at the address indicated below:

301 West Main St.
Benton IL 62812

√ 750 Missouri Ave.
P.O. Box 249
East St. Louis, IL 62202

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