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

FAYGIE FIELDS and BRIAN NELSON,

Plaintiffs,

v.

DONALD N. SNYDER , JR., Director Illinois Department of Corrections, WILLARD O. ELYEA, M.D., Medical Director, Illinois Department of Corrections, DR. DENNIS HOPKINS, Chief of Mental Health Services, Illinois Department of Corrections, GEORGE E. DETELLA, Associate Director, Illinois Department of Corrections, GEORGE WELBORN, Warden, Tamms Correctional Center, KELLY RHODES, Ph.D., Supervising Clinical Psychologist, Tamms Correctional Center, and ILLINOIS DEPARTMENT OF CORRECTIONS, a public entity,

Defendants. **No. 00-CV-0528-DRH**

MEMORANDUM AND ORDER

HERNDON, District Judge:

I. Introduction

On July 6, 2000, Plaintiffs Ashoor Rasho, Faygie Fields, Brian Nelson, and Robert Boyd, current and former seriously mentally ill prisoners at the closed maximum security facility at Tamms Correctional Center ("Tamms"), filed a putative class action against Donald N. Snyder, Jr., Director of the Illinois Department of Corrections (the "Department"), Willard O. Elyea, M.D., Medical Director of the Department, Dr. Dennis Hopkins, Chief of Mental Health Services of the Department, George E. DeTella, Associate Director of the Department, George Welborn, Warden

of Tamms, Marvin Powers, M.D., Medical Director of Tamms, Kelly Rhodes, Ph.D., Supervising Clinical Psychologist of Tamms, Rakesh Chandra, M.D., Psychiatrist at Tamms, and the Department, a public entity. **(Doc. 1)**. At this juncture of the case, only Plaintiffs Fields and Nelson and Defendants Snyder, Elyea, Hopkins, DeTella, Welborn, Rhodes, and the Department remain. Class action status has been denied.

Plaintiffs remaining claims allege Defendants were deliberately indifferent to Plaintiffs' serious mental health needs in violation of the Eighth and Fourteenth Amendments (Count I); Defendants imposed unconstitutional conditions of confinement for seriously mentally ill inmates in violation of Plaintiffs' right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments (Count II); and Defendants discriminated against Plaintiff Fields on account of his serious mental illness in violation of the Rehabilitation Act, **29 U.S.C. § 794** (Count V). Only declaratory and injunctive relief remain at issue (Counts VI and VII) as Plaintiffs no longer seek money damages. **(*See* Doc. 183, Pls.' Response to Defs.' Objections to the Report and Recommendation of Magistrate Judge Proud at pp. 1-2)**.

On January 24, 2005, Magistrate Judge Clifford J. Proud submitted a Report and Recommendation ("Report") proposing that this Court grant in part and deny in part Defendants' motion for summary judgment. **(Doc. 175)**. Specifically, the Magistrate recommended that the Court grant summary judgment to Snyder, DeTella, and Welborn with respect to Counts I and II and deny summary judgment

to the Elyea, Hopkins, Rhodes, and the Department. The Report was sent to the parties with a notice informing them of their right to appeal by way of filing "objections" within ten days of service of the Report. On February 15, 2005, Defendants filed objections to the Report. **(Docs. 178 & 179)**. Thereafter, Plaintiffs filed a response to Defendants' objections. **(Docs. 183)**.

Since timely objections have been filed, this Court must undertake *de novo* review of the Report. **28 U.S.C. § 636(b)(1)(B); FED. R. CIV. P. 72(b); S.D. ILL. LOCAL R. 73.1(b); *Govas v. Chalmers*, 965 F.2d 298, 301 (7th Cir. 1992)**. The Court may "accept, reject or modify the recommended decision." ***Willis v. Caterpillar Inc.*, 199 F.3d 902, 904 (7th Cir. 1999)**. In making this determination, the Court must look at all the evidence contained in the record and give fresh consideration to those issues to which specific objection has been made. ***Id.***

II. Summary Judgment Standard

Summary judgment is proper where the pleadings and 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); *Wyatt v. UNUM Life Insurance Company of America*, 223 F.3d 543, 545 (7th Cir. 2000); *Oates v. Discovery Zone*, 116 F.3d 1161, 1165 (7th Cir. 1997); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986))**. The movant bears the burden of establishing the absence of factual issues and entitlement to judgment as a matter

of law. ***Wollin v. Gondert*, 192 F.3d 616, 621-22 (7th Cir. 1999)**. The Court must consider the entire record, drawing reasonable inferences and resolving factual disputes in favor of the non-movant. ***Schneiker v. Fortis Insurance Co.*, 200 F.3d 1055, 1057 (7th Cir. 2000); *Baron v. City of Highland Park*, 195 F.3d 333, 337-38 (7th Cir. 1999)**.

In response to a motion for summary judgment, the non-movant may not simply rest upon the allegations in his pleadings. ***Smith v. Sheahan*, 189 F.3d 529, 532 (7th Cir. 1999)**. Rather, the non-moving party must show through specific evidence that an issue of fact remains on matters for which he bears the burden of proof at trial. ***Smith v. Severn*, 129 F.3d 419, 425 (7th Cir. 1997); *Celotex*, 477 U.S. at 324.** In reviewing a summary judgment motion, the Court does not determine the truth of asserted matters, but rather decides whether there is a genuine factual issue for trial. ***EEOC v. Sears, Robuck & Co.*, 233 F.3d 432, 436 (7th Cir. 2000)**.

III. Analysis[1]

A. Eighth Amendment Claims of Deliberate Indifference[2]

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[1] **LOCAL RULE 73.1** provides that written objections shall "specifically identify the portions of the proposed findings, recommendations, or reports to which objection is made and the basis for such objections." **S.D. ILL. LOCAL R. 73.1(b).** Thus, the Court will review the Magistrate's Report only insofar as Defendants have made specific objections to it in conformity with the Court's Local Rules.

[2]The Magistrate Judge analyzed Counts I and II together finding that the claim based on deliberate indifference to Plaintiffs' serious medical needs (Count I) and the claim for unconstitutional conditions of confinement (Count II) are "essentially 'two sides of the same coin.'" **(Doc. 175 at p. 4)**. Neither party has objected to the Magistrate's decision to combine the analysis of Counts I and II. **(*See* Doc. 179, Defs.' Mem. of Law in Support of Objections To the Report and Recommendation of Magistrate Judge Proud at pp. 4-5; Doc. 183, Pls.' Response to Defs.' Objections To the Report and Recommendation of Magistrate Judge Proud at p. 4 n.2).**

Defendants object to the denial of summary judgment arguing that while an issue of fact may exist as to whether or not Plaintiffs suffer from a serious mental illness, no evidence supports a finding that Defendants were deliberately indifferent. Defendants contend that the evidence reflects that Plaintiffs have been seen by mental health staff on hundreds of occasions, have been tested extensively, and have received therapy and other treatment. Defendants ask the Court to find as a matter of law that no evidence exists from which a reasonable trier of fact could find either that Defendants actually drew the inference that Plaintiffs were suffering from a serious mental illness or that Defendants consciously and culpably disregarded the risk that Plaintiffs were suffering from a serious mental illness.

The Court declines to accept Defendants' invitation. Evidence that Plaintiffs have been seen by mental health staff, have been tested extensively, and have received therapy and other treatment does not definitively resolve the question of deliberate indifference for summary judgment purposes. ***See Sherrod v. Lingle,* 223 F.3d 605, 611-12 (7th Cir. 2000)("The question mandated by *Farmer* is whether the official knew of and disregarded an excessive risk to the inmate's health, not whether the inmate was ignored."); *see also Sanville v. McCaughtry,* 266 F.3d 724, 735 ("[D]eliberate indifference may be inferred . . . when the medical professional's decision is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that**

Thus, this Court will treat the claims together as well.

the person responsible did not base the decision on such a judgment.")(internal quotations and citations omitted). Here, Plaintiffs' experts opine that Defendants appear to have intentionally misinterpreted (or refused to acknowledge) the signs and symptoms of Plaintiffs' serious mental illnesses and to have indefensibly labeled them as malingerers. Plaintiffs contend that Defendants' refusal to diagnose Plaintiffs as seriously mentally ill keeps Plaintiffs from receiving appropriate treatment and/or removal from closed maximum security facility at Tamms, an environment that is universally deemed inappropriate for the seriously mentally ill. Defendants vehemently deny this claim and have produced evidence to show, among other things, they did not have knowledge of Plaintiffs' serious mental health needs and did not intentionally disregard Plaintiffs' mental health problems. Based on the conflicting evidence before it, the Court finds this is simply not the case for summary judgment.

B. Rehabilitation Act Claim

Defendants argue that the Magistrate erred in finding that summary judgment was inappropriate because the Magistrate failed to address Defendants' argument that Plaintiff Fields was not otherwise qualified for the programs he seeks because of his behavior and that Plaintiff Fields was denied the benefits of the programs solely based on his handicap.

The Rehabilitation Act protects a "qualified individual with a disability" from discrimination solely because of his disability in any program receiving federal

financial assistance. **29 U.S.C. § 794(a)**. To make out a *prima facie* case under the Act, the plaintiff must show: that he "suffers from a disability as defined under the Act; that he was otherwise qualified for the job; that he was involved in programs receiving federal financial assistance; and that he was excluded from participation, denied benefits, or otherwise discriminated against solely because of his disability." ***Branham v. Snow,* 392 F.3d 896, 902 (7th Cir. 2004) (citing *Silk v. City of Chicago,* 194 F.3d 788, 798 n.6 (7th Cir.1999))**. "'Otherwise qualified' means that were [he] not handicap, [Fields] would have qualified for the program or treatment [he] was denied because of [his] handicap." ***Grzan v. Charter Hospital of Northwest Indiana,* 104 F.3d 116, 120 (7th Cir. 1997)**.

Defendants assert Plaintiff Fields was not otherwise qualified because restrictions at Tamms are based on behavior, not on handicaps. But Plaintiffs' experts contend that Fields' inappropriate behavior is a manifestation of his handicap, therefore, assuming we believe Plaintiffs' experts, absent the mental illness, Fields may be otherwise qualified for the programs at Tamms. Similarly, Defendants blanket assertion that "Plaintiffs' behavior and records were the *deciding* factor in determining the place and nature of their confinement" does not carry Defendants to victory on summary judgment given the questions of fact surrounding Fields' disability and whether Fields' behavior was tied to his disability. **(Doc. 152, Defs.' Mem. of Law in Support of Mot. For Summary Judgment at p. 15)**. Put simply, the Court agrees with the Magistrate that there is a genuine dispute of

material fact precluding resolution of the Rehabilitation Act claim on summary judgment.

IV. Conclusion

In sum, the Court **REJECTS** Defendants' objections and **ADOPTS** Magistrate Judge Proud's January 24, 2005 Report. **(Doc. 175)**. Accordingly, the Court **GRANTS in part** and **DENIES in part** Defendants' summary judgment motion. **(Doc. 151)**. Specifically, the Court **GRANTS** Defendants' summary judgment motion as to Defendants Snyder, DeTella, and Welborn with respect to Counts I and II and **DENIES** Defendants' motion for summary judgment as to Elyea, Hopkins, Rhodes, and the Department. **(Doc. 151)**.

The Magistrate Judge is **DIRECTED** to reset the final pretrial conference as soon as practicable.

IT IS SO ORDERED.

Signed this 24th day of March, 2005.

/s/ David RHerndon
United States District Judge