

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHRISTINE M. FINNEGAN)	
)	Case No.: 1:21-cv-341
Plaintiff,)	
)	
v.)	
)	
JAMES MENDRICK, et al.)	Honorable Judge Steven C. Seeger
)	
Defendants.)	

DEFENDANTS’ MOTION TO DISMISS PLAINTIFF’S COMPLAINT

Defendants, JAMES MENDRICK and ANTHONY ROMANELLI, by and through their attorney, Robert Berlin, DuPage County State’s Attorney, and his Assistant, Nicholas V. Alfonso, and for their Rule 12(b)(1) and (b)(6) Motion to Dismiss Plaintiff’s Complaint (ECF # 1) (hereinafter “Complaint”), state the following:

1. Plaintiff, recently sentenced (but not yet incarcerated) DuPage County resident, has prematurely filed this action in an attempt to redress an allegedly upcoming violation of her 8th Amendment right to adequate medical treatment. Specifically, Plaintiff asks this Court to direct Defendants to administer her methadone opioid use disorder (“OUD”) treatment when she reports to the DuPage County Jail (“DCJ”) to serve her term of incarceration. (*Id.*).

2. In her Complaint, Plaintiff conclusory (and incorrectly) alleges—without pointing to any specific factual instances—that Defendants have a “policy and practice of refusing to permit incarcerated individuals to be medically treated with methadone... [and that Defendants routinely] deny prescribed medical care to people with opioid use disorder (“OUD”) in [their] custody.” (ECF # 1 at ¶ 4). She then requests this Court step into the shoes of her medical provider(s) and direct the course of her soon-to-be prescribed medical treatment. (ECF # 1 at ¶¶ 5, 7 & 67).

3. Plaintiff asks the Court to predict not only that the outcome of her intake physical will be unfavorable, but also asks for findings that: (1) the subsequent course of treatment (or lack thereof) *will be* insufficient; and that (2) Defendants subjectively *know now* of that insufficiency in advance of her treatment, prior to having Plaintiff in their custody; and prior to having any opportunity for DuPage’s physicians to examine Plaintiff and/or her medical records¹ to determine the appropriateness of Plaintiff’s preferred course of OUD treatment. (*Id.* at ¶¶ 66-73).

4. Plaintiff’s Complaint should be dismissed as unripe and improper. Not only does Plaintiff seek a remedy for a harm which has not yet occurred; she also requests the Court substitute its judgment for that of Plaintiff’s future medical providers. Plaintiff’s requests are absolutely inappropriate for judicial review based on her current circumstances. Her Complaint must therefore be dismissed.

STANDARD OF REVIEW

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) rests on whether the plaintiff has properly stated a claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plaintiff’s pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8. The pleading is not required to set forth detailed factual allegations, but it does require something more than basic, conclusory allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). In particular, the pleading must contain allegations that “state a claim to relief that is plausible on its face.” *Id.* (citing *Twombly*, 550 U.S. at 570). A claim is facially plausible when “the pleaded content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

¹ Defendants have requested Plaintiff’s counsel provide them copies of Plaintiff’s medical records so Defendants’ physicians may review Plaintiff’s course of treatment. To date, Plaintiff has failed to provide them.

A motion to Dismiss Federal Rule of Civil Procedure 12(b)(1) proceeds upon the determination of whether a Court has subject matter jurisdiction over the Plaintiff's claim. The Ripeness doctrine is based on the "central perception ... that courts should not render decisions absent a genuine need to resolve a real dispute." 13A Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice & Procedure § 3532.1, at 114 (2d ed.1984). Like the related doctrine of mootness, ripeness is grounded in both Article III and prudential concerns. *Daniels v. Area Plan Comm'n of Allen County*, 306 F.3d 445, 452 n. 3 (7th Cir.2002); *Hinrichs v. Whitburn*, 975 F.2d 1329, 1333 (7th Cir.1992). "Cases are unripe when the parties point only to hypothetical, speculative, or illusory disputes as opposed to actual, concrete conflicts." *Hinrichs*, 975 F.2d at 1333.

ARGUMENT

In this case, Plaintiff's Complaint points to a dispute which is wholly hypothetical. First Plaintiff requests the Court presume that, upon intake into DuPage County Jail, her intake physical² will show (1) that she suffers from OUD, and (2) that methadone treatment is the only viable treatment option for Plaintiff. Then, Plaintiff asks the Court to predict that Defendants' response to the result of Plaintiff's physical examination will be to ignore it and to deny her physicians permission to prescribe their recommended course of treatment. Plaintiff requests the Court do this all prior to her being *taken into custody*. (ECF # 1).

"The basis rationale of the Ripeness doctrine is to prevent the Courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision

² Upon arrival at DuPage County Jail, all inmates undergo an initial medical records review and physical examination allowing DuPage's physicians to determine the inmate's particularized medical needs.

has been formalized and its effects felt in a concrete way by the challenging parties.” *Bio–Medical Laboratories, Inc. v. Trainor*, 68 Ill.2d 540, 546 (1977), quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148–49 (1967). Ripeness involves a two-step test: (1) an evaluation of the fitness of the issues for judicial decision; and (2) the hardship to the parties of withholding court consideration. *Abbott Laboratories*, 387 U.S. at 149. As to the first step of the test, the fitness of the issues for judicial determination relates to the posture of the proceedings before the agency. (*Id.*).

Here, there has been no determination of the issue of Plaintiff’s medical treatment by DCJ or its administration. Plaintiff has not suffered any distinct, palpable harm. Whether the harm(s) she alleges will occur is contingent upon a string of future events happening in a specific, unpredictable manner—those being her physical examination, her doctors’ assessments thereof, and their subsequent proposed treatment plans. As such, the first aspect of the test remains unsatisfied—there has been no determination. *Prop. Cas. Insurers Ass’n of Am. v. Donovan*, 66 F. Supp. 3d 1018, 1038 (N.D. Ill. 2014) (“An issue is not fit for judicial decision where it rests upon “contingent future events that may not occur as anticipated, or indeed may not occur at all.”)

Regarding the second step, here it cannot be said that Plaintiff will undergo any hardship absent a Court order. Defendants do not owe any duty to Plaintiff to provide her any treatment (or assurances thereof) prior to her incarceration. Even after she is incarcerated, we cannot know-in-advance the result of Plaintiff’s physical, or the attendant opinions of her medical providers for the care and treatment of her prospective OUD. There is not yet any “immediate and/or real” indication that Plaintiff would be harmed should the Court elect to set the matter of her potential course of treatment aside. *Hometown Co–Operative Apartments v. City of Hometown*, 515 F.Supp. 505 (N.D. Ill. 1981). (“[T]he possibility that circumstances will arise in the future [in which

Plaintiff may be harmed in the future] does not state a case or controversy ripe for judicial determination.”). Thus, Plaintiffs' constitutional argument does not pose an issue that is fit for judicial decision at the present time. *See Abbott*, 387 U.S. at 147–49, 87 S.Ct. at 1515.

As of the date of filing hereof, Defendants have been unable to find any specific 7th Circuit case law dealing with the issues now before the Court. No Federal Court in Illinois has gone so far as to order a specific course of medical treatment for a prospective Illinois inmate, prior to that inmate's incarceration. For this Court to do so now would set a dangerous precedent, wherein the Northern District would become inundated with Complaints from future inmates seeking to have the course of their treatment under incarceration directed by Court order without any factual showing of prior impropriety whatsoever. For this reason, as well as those previously mentioned, Plaintiff's Complaint must be dismissed.


CONCLUSION

WHEREFORE, for the reasons stated herein, Defendants JAMES MENDRICK and ANTHONY ROMANELLI respectfully request that this honorable Court dismiss Plaintiff's Complaint, and seek any and all further relief deemed to be just and equitable under the circumstances, without further notice.

Dated: February 2, 2021

Respectfully submitted,

ROBERT B. BERLIN
DuPage County State's Attorney

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Assistant State's Attorney

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NOTICE OF FILING

TO: Counsel of Record

PLEASE TAKE NOTICE that on February 2, 2021, I caused the attached *Defendants' Motion to Dismiss Plaintiff's Complaint* to be filed in the District Court for the Northern District of Illinois in the above-captioned matter by using the Court's CM/ECF filing system, which will send a notification of such filing to all counsel of record.


CERTIFICATE OF SERVICE

I, Nicholas V. Alfonso, certify that the foregoing notice and attached motion were served on all counsel of record *via* CM/ECF on February 2, 2021.

Dated: February 2, 2021

Respectfully submitted,

ROBERT B. BERLIN
DuPage County State's Attorney

BY: 

 NICHOLAS V. ALFONSO
 Assistant State's Attorney

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