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

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

DEFENDANTS' RESPONSE TO PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Defendants, JAMES MENDRICK and ANTHONY ROMANELLI, by and through their attorney, Robert B. Berlin, DuPage County State's Attorney, and his Assistant, Nicholas V. Alfonso, for their Response to Plaintiff's Emergency Motion for Preliminary Injunction (ECF # 18) (hereinafter "Emergency Motion"), state the following:

1. Plaintiff, a recently sentenced (but not yet incarcerated) Cook County resident, has prematurely filed this action requesting that this Court direct Defendants to administer methadone for Plaintiff's opiate use disorder ("OUD") treatment once she surrenders to the custody of the DuPage County Sheriff to serve her term of incarceration. (ECF # 1). Now, Plaintiff redundantly requests emergency injunctive relief, claiming—contrary to the well-established facts previously communicated by and between the Parties—that: (a) Defendants have refused to consider offering Plaintiff medication assisted treatment ("MAT") for her OUD; and (b) that Defendants will without-doubt apply a heretofore unheard of "mandatory withdrawal policy" to Plaintiff's medical circumstances. (ECF # 18 at ¶¶ 1 & 4). She then repeats her request that this Court step into the shoes of her medical provider(s) and "…issue a preliminary injunction requiring Defendants to provide methadone to Ms. Finnigan throughout her incarceration in the DuPage County Jail." (*Id*. at ¶ 8; *see also* ECF # 1).

2. Plaintiff's Emergency Motion should be denied as lacking any verifiable factual basis. Instead, the Parties prior discussions clearly contradict Plaintiff's allegation that Defendants are refusing to consider MAT, obliterating any likelihood of her success on the merits. Absent clear-cut, unrefuted evidence that Defendants intend to refuse MAT, Plaintiff cannot prove any probability of irreparable harm necessary for entry of an emergency injunction.

3. Defendants also have an absolute legal interest in allowing their physicians to examine Plaintiff prior to determining a proper course for her treatment. Defendants herein are not medical professionals and cannot legally 'order' any specific course of treatment. Even if Defendants were licensed to practice medicine, simply acceding to provide Plaintiff methadone prior to a full evaluation of Plaintiff's medical records (and/or an examination of her current physical state) would invite certain liability should the outcome of Plaintiff's proposed treatment result in unexpected complications while she is in Defendants' custody.

4. Lastly, the public's interest surely weighs in favor of allowing Defendants' physicians to make fully informed, considered decisions when prescribing medical treatment to inmates in their care. Plaintiff's request for an injunction is completely unprecedented. Granting her requested relief would invite an onslaught of frivolous litigation absent any basis in fact, designed to harass similarly situated individuals as well as their healthcare staff. For these reasons and those that follow, Plaintiff's requests are absolutely inappropriate for judicial review based on her allegations and current circumstances. Her Emergency Motion must be denied.

STANDARD OF REVIEW

The party seeking the preliminary injunction must demonstrate that: (1) she is likely to succeed on the merits at trial; (2) she is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in her favor; and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 22 (2008). The remedy may be granted only on a "clear showing" of entitlement to relief. *Winter*, 555 U.S. at 22.

ARGUMENT

Based on the totality of facts, allegations, and information available to the Parties, it is apparent that Plaintiff cannot satisfy any of the *Winter* factors necessary for entry of an emergency injunction. In fact, each of the *Winter* factors weigh in favor of Defendants' position.

I. PLAINTIFF CANNOT SHOW A LIKELIHOOD OF SUCCESS ON THE MERITS

Plaintiff cannot show a likelihood of success on the merits as the issues of this case have yet to be resolved. Plaintiff seeks relief for an ambiguous, future harm based on her presupposition that Defendants will refuse to offer her methadone OUD treatment subsequent to her upcoming incarceration. (ECF # 18). However, on multiple occasions Defendants have indicated their willingness to provide the very same treatment Plaintiff requests, if indicated and medically necessary, *pending an evaluation of Plaintiff's complete medical file and the conclusion of Plaintiff's intake physical examination* by qualified physicians. (See Group Exhibit "A," Email Communications by Counsel). As is demonstrated by the emails exchanged between the Parties prior (and subsequent) to Plaintiff's filing of this matter, Defendants have repeatedly requested that Plaintiff provide their physicians her medical file to allow them to examine the records and make an independent determination on whether Plaintiff's proposed course of treatment is medically appropriate.[1] *Id*. However, as of the date she filed her Emergency Motion, Plaintiff had refused to do so.[2]

There are clear factual distinctions between this case and two cases cited by Plaintiff's brief, wherein courts in other jurisdictions have granted requests for preliminary injunctions for a prisoner

[1] Defendants require Plaintiff's medical file, in part, because Plaintiff was initially prescribed methadone by Dr. Reeves ***more than two (2) years ago***, on August 22, 2019. (ECF # 19, Ex. C at ¶¶ 9-10). Additionally, based upon her counsel's representations, Plaintiff's last re-evaluation was 6 months ago, on August 24, 2020. (*See* Group Ex. A at p. 3).
[2] Plaintiff only recently disclosed her medical records on February 12, 2021.

to receive some type of MAT. (*See* ECF # 19, Group Ex. A at p. 2). First, in *Pesce v. Coppinger*, 355 F. Supp. 3d 35 (D. Mass. 2018), the court granted plaintiff's motion for preliminary injunction to be continued on methadone. There, however, the prison—*without making an individualized assessment of the plaintiff's need for that treatment*—simply relied on a blanket policy of not allowing such treatment.[3] Because the defendants' course of treatment ignored and contradicted Pesce's physician's instructions, and because the defendants did so absent any individualized assessment of the plaintiff, the court concluded that he had established a likelihood of success as to his Eighth Amendment claim. *Id.* at 48–49; *Compare Chamberlain v. Virginia Dep't of Corr.*, No. 7:20-CV-00045, 2020 WL 5778793, at **5 - 6. (W.D. Va. Sept. 28, 2020)

Similarly, in *Smith v. Aroostook Cty.*, 376 F. Supp. 3d 146 (D. Me. 2019), *aff'd*, 922 F.3d 41 (1st Cir. 2019), the court granted preliminary injunctive relief requiring that a prospective inmate currently receiving MAT continue to receive that treatment while incarcerated. Again, though, the Court based its decision on an affirmative statement by the Jail which is not present here: that it would **not** provide MAT *under any circumstances*. *Smith*, 922 F.3d at 152 ("As we *do not use* opioid, or opioid replacements in the Aroostook County Jail, this protocol is designed to assist inmates during the withdrawal process.") (Internal citations omitted).

In this case, Plaintiff only recently disclosed her medical file, long after filing her initial Complaint and the present Motion. Given the relative tardiness of Plaintiff's disclosure, Defendants' physicians have not yet had any opportunity to make a sound determination whether they will (or intend to) act in a manner which may arguably violate Plaintiff's right to adequate treatment. Contrary to *Pesce*, Defendants plan to allow their healthcare staff to decide whether to prescribe methadone in accordance with the result of an individualized assessment of Plaintiff's

[3] Indeed, in granting relief, the *Pesce* court specifically distinguished cases where prisons appropriately had denied similar treatment based on individualized assessments of the inmate's medical needs. 355 F. Supp. 3d at 47–48.

current medical needs. (Group Ex. A). Contrary to *Smith* (and Plaintiff's allegations), Defendants currently have no 'blanket denial of MAT' policy in place. (*Id*.). At this juncture, all that can be known is: (1) Plaintiff's course of treatment is yet to be determined, and (2) said determination will turn on the reasonable and sound basis of Plaintiff's upcoming individualized assessment. (*Id*.). The issues Plaintiff requests to be evaluated "on their merits" are not yet clear, and no showing of likelihood of success can logically be made. This case is clearly distinguishable from the holdings in *Pesce* and *Smith*, and Plaintiff's request for emergency injunctive relief should be denied.

II. PLAINTIFF CANNOT SHOW ANY LIKELIHOOD OF IRREPARABLE HARM

The contemporary facts of this case also confirm that there is no imminent likelihood of irreparable harm. To succeed on her Motion, Plaintiff must show that the irreparable harm she faces in the absence of relief is actual and imminent, neither conjectural nor hypothetical. *Summers v. Earth Island Inst.,* 555 U.S. 488, 493 (2009). Again, on multiple occasions counsel for Defendants have indicated to Plaintiff (and Plaintiff's counsel) that Defendants will consider (and are considering) offering methadone treatment to Plaintiff. (See § I above). So too, given Defendants' repeated communication(s) of that willingness (pending a full and impartial fitness-of-treatment evaluation), it becomes obvious that Plaintiff's allegation that Defendants "have a de facto policy of forced withdrawal" is naught but a mere falsehood. No determination has been made as to whether DuPage County Jail's physicians will prescribe Plaintiff methadone. Any likelihood of harm to Plaintiff based upon their future determination is pure conjecture, hypothetical at best; and Plaintiff's Motion must be denied.

III. THE BALANCE OF EQUITIES TIPS IN DEFENDANTS' FAVOR

The present balance of equities in this case clearly weigh in Defendants' favor. On the one hand, Plaintiff's Eighth Amendment and ADA rights concern only one of many conceivable

outcomes—while Plaintiff seeks relief for one potential outcome wherein she is refused her preferred course of treatment, it remains equally likely she will receive just that. (See § I above). On the other hand, Defendants' equitable interests are far more pressing at this time: Defendants have not only a right to protect their legal interest in facilitating timely and appropriate treatment for the inmates in their custody, but also; they must abide their duty to ensure **only** well researched, evaluated medical treatment necessary to effect recovery is provided. *Snipes v. DeTella*, 95 F.3d 586, 591 (7th Cir. 1996) (quoting *Estelle v. Gamble,* 429 U.S. 97, 107 (1976)).

Defendants herein are not medical professionals—they cannot legally 'order' any specific course of treatment. Instead, it is their duty to rely upon physicians in their employ to make educated decisions as to what treatments are suitable for the inmates in their care. [4] By demanding that Defendants dictate her care, Plaintiff would have this Court order them to disregard that duty, forcing Defendants to abandon and forego any informed consideration of whether Plaintiff's preferred/requested treatment is medically appropriate. Given that Plaintiff's Emergency Motion is silent as to any *more recent* diagnoses or methadone prescriptions other than those which were entered initially in August of 2019 (*see* ECF # 19, Ex. C at ¶¶ 9-10; *see also* Fn 1 above), the balance of harms in this case weighs in favor of allowing Defendants' physicians to conduct a full and frank evaluation of Plaintiff's *current* condition of addiction prior to ordering any additional or separate course of treatment.

[4] "This follows naturally from the division of labor within a prison. Inmate health and safety is promoted by dividing responsibility for various aspects of inmate life among guards, administrators, physicians, and so on. Holding a non-medical prison official liable in a case where a prisoner was under a physician's care would strain this division of labor…and could even have a perverse incentive *not* to delegate treatment responsibility to the very physicians most likely to be able to help prisoners, for fear of vicarious liability." *Greeno v. Daley*, 414 F.3d 645, 656 (7th Cir. 2005); *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004).

Plaintiff is not entitled to her preferred medical treatment absent qualified evaluation. *Snipes v. DeTella,* 95 F.3d 586, 591 (7th Cir.1996). Certainly, this Court must allow Defendants physicians to make their own well-reasoned determination prior to entering upon their medical judgment. Plaintiff's Emergency Motion must therefore be denied.

IV. ORDERING AN INJUNCTION IS NOT IN THE PUBLIC'S INTEREST

Finally, an injunction in this case is clearly against the public's interest. As previously stated in Defendants' Motion to Dismiss (ECF # 15), Defendants have been unable to find any specific 7th Circuit case law where a 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 surrender for incarceration. To do so now would set a dangerous precedent, wherein the District Courts of this State would quickly become inundated with frivolous complaints from future inmates seeking to have the course of their treatment under incarceration directed by judicial decree, without any factual showing of prior impropriety whatsoever. The public, as well as those individuals and institutions bound to serve the public good within the correctional environment, would bear the full weight and cost of all such litigation.

CONCLUSION

Here, whether by misapprehension or misrepresentation; Plaintiff's allegations that Defendants have "refused" to confirm her continued OUD treatment post-incarceration are patently false. As previously stated, Defendants have indicated on multiple occasions that they are willing to consider offering Plaintiff MAT in the form of methadone, *should an evaluation of her medical record and physical intake examination indicate such treatment is medically necessary*. Plaintiff failed to disclose her medical records prior to filing her Emergency Motion (foreclosing Defendants' ability to make even an informed initial determination on her treatment prior to the

filing deadline hereof), and she has yet to undergo her intake physical. (Group Ex. A.). Defendants cannot order a specific course of treatment for Plaintiff without the informed advice of DuPage County Jail's Physicians, subsequent to their review of her medical records and physical evaluation.

As Plaintiff cannot satisfy any of the *Winter* factors necessary for this Court to order an injunction, her Emergency Motion must be denied.

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

Respectfully submitted,

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