

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. 253-5-19 Wncv

LEO P. PRATT,
Plaintiff,

v.

MICHAEL TOUCHETTE,
Defendant

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

In this V.R.C.P. 75 proceeding, Plaintiff Leo P. Pratt, who is an inmate at the Southern State Correctional Facility, challenges the Department of Corrections' alleged refusal to offer him a "low carbohydrate diet." Presently before the Court are the parties' cross-motions for summary judgment. The Court heard oral arguments on the motions on February 7, 2022. Mr. Pratt is represented by Emily Tredeau, Esq. The Commissioner of Corrections is represented by Pamela Eaton, Esq.

The following facts appear to be undisputed. Mr. Pratt suffers from Diabetes Mellitus, a metabolic condition that results in his body's inability to control his blood sugar levels. The appropriate treatment for this condition includes proper diet, exercise and medication. For the past six years, Mr. Pratt has been treated by Mitchell R. Miller, M.D., the "Medical Director" for VitalCore, which provides medical treatment for Vermont inmates pursuant to a contract with the Department of Corrections. Dr. Miller prescribes insulin for Mr. Pratt and sees Mr. Pratt from time to time in his office. Nevertheless, Mr. Pratt's diabetes is not well controlled. His blood sugars are high, often so high that he requires an immediate dose of insulin. The long-term effects of chronically high blood sugars can include problems with kidney function, problems with vision, neuropathy, and heart disease. Mr. Pratt currently suffers from neuropathy (numbness and tingling) in his feet, for which Dr. Miller has authorized him to use the bottom bunk in his prison cell.

The Department of Corrections offers inmates with diabetes what it calls a "Consistent Carbohydrate" diet, which is based upon the menu offered to the prison population generally, but modified to reduce total calories, reduce the portions of

carbohydrate containing foods, eliminate sucrose containing foods and drinks, and replace desserts with fruit or pudding (Exhibit B, at 1). Two such options are offered to inmates, namely, the “1800 [daily calorie] Diabetic” option, and the “2200 [daily calorie] Diabetic” option (Id., at 2).

Mr. Pratt has been offered the 1800 calorie option, but he refuses to follow it because he believes that it contains too many carbohydrates, and carbohydrates keep his blood sugar levels high (Exhibit D, ¶ 2). Mr. Pratt insists that he be offered a “low carbohydrate diet,” which he describes as follows: “instead of most of the carbohydrates in Defendant’s diets, those high carbohydrate foods would be replaced with low carbohydrate foods so that there are fewer carbohydrates at each meal offered by Defendant” (Id., ¶ 1). Mr. Pratt has filed formal grievances demanding he be given a “low carbohydrate diet,” but his grievances have been denied. So, when Mr. Pratt receives his meals each day, he eats those portions that he thinks are good for him and leaves the rest untouched. As a result, Mr. Pratt has to be given shakes to drink each night, to make up for the calories that he lost when he declined to finish the meals that he was offered. This practice, in turn, exacerbates the situation because the shakes contain carbohydrates.

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a). When determining whether there is a disputed issue of material fact, a court must afford the party opposing summary judgment the benefit of all reasonable doubts and inferences. Carr v. Peerless Insurance Co., 168 Vt. 465, 476, 724 A.2d 454 (1998). However, a non-moving party cannot rely on unsupported generalities or speculation to defeat a properly-supported motion for summary judgment. See V.R.C.P. 56 (c), (e).

Conclusory allegations without facts to support them do not preclude the entry of summary judgment. Robertson v. Mylan Laboratories, Inc., 2004 VT 15, ¶15, 176 Vt. 356; accord Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) (“If the evidence is merely colorable, . . . or is not significantly probative, . . . , summary judgment may be granted.”) (citations omitted). An opposing party’s allegations must be supported by affidavits or other documentary materials which show specific facts sufficient to justify submitting that party’s claims to a factfinder. See Robertson, 2004 VT 15, ¶15; Samplid Enterprises, Inc. v. First Vermont Bank, 165 Vt. 22, 25, 676 A.2d 774 (1996).

The Department of Corrections is required by law to “provide health care for inmates in accordance with the prevailing medical standards.” 28 V.S.A. § 801(a). Thus, in order to prevail in this case, Mr. Pratt must demonstrate that DOC is failing to provide him with health care for his diabetes in accordance with prevailing medical standards. What the prevailing medical standards are, and whether DOC is meeting them, are questions that can only be answered by a

qualified medical professional; these issues are not so obvious that a lay person could be expected to understand them. Pontbriand v Bascomb, 20092477608 (Vt. 2009), at *2 (addressing the burden of proof borne by an inmate asserting a medical malpractice claim against the health care contractor retained by DOC). Therefore, in order to meet his burden of proof in this case, Mr. Pratt must present testimony from a qualified medical professional to the effect that DOC is failing to provide him with health care for his diabetes in accordance with prevailing medical standards.

The only professional health care provider who has provided testimony in this case is Dr. Miller, who has been treating Mr. Pratt for the past six years. Dr. Miller gave a deposition in which he testified that the “1800 Diabetes” diet that DOC has offered to Mr. Pratt can be described as a “carbohydrate controlled diet” because it has “reduced amounts of carbohydrates” (Transcript of the Deposition of Mitchell Miller, December 29, 2020, at 11 and 14). This kind of diet is appropriate for Mr. Pratt, according to Dr. Miller, because “carbohydrates tend to get digested rapidly and raise blood sugars.... [s]o if there are fewer carbohydrates in your diet in general, it may be easier to control your blood sugars than it would be if you’re eating say the regular diet, which has things like cake and fruit drinks and syrup, which would tend to raise your blood sugar rapidly and might be harder to control....” (d., 14-15). Dr. Miller described the goal of DOC’s “Consistent Carbohydrate” diet guideline as “to make sure there aren’t big swings in carbohydrate content, although it does result in some reduction in total calories” (Id., at 19). Then, when asked whether he would recommend a “low carb diet” for Mr. Pratt, Dr. Miller replied: “I would recommend one of the diabetes diets, the carbohydrate controlled diets....” (Id., 21-22). Lastly, when asked what he would recommend if Mr. Pratt were “your patient on the street,” Dr. Miller replied: “I would say it would be easier for him to manage his blood sugars if he had a carbohydrate controlled diet or a more carbohydrate controlled diet” (Id., 24-25).

Mr. Pratt has come forward with no testimony from any qualified medical professional supporting his contention that DOC is failing to provide him with health care in accordance with prevailing medical standards. To the contrary, the testimony of Dr. Miller, the only medical testimony in the record, supports the opposite conclusion. According to Dr. Miller, the diet that DOC has offered to Mr. Pratt is appropriate to his condition because, if followed, it would reduce Mr. Pratt’s daily intake of carbohydrates in a way can control “big swings in carbohydrate content.”

The only admissible evidence in the record supporting Mr. Pratt’s claim is the fact that his blood sugar levels clearly are not well controlled. If there were also evidence that he was complying with DOC’s treatment recommendations, including the diet that he has been offered, that might be sufficient to create a disputed question of fact precluding summary judgment. But such is not the case here. Mr. Pratt acknowledges that he refuses to follow DOC’s diet recommendations.

Based upon the foregoing, it is clear that Mr. Pratt has no admissible evidence supporting his claim that DOC has failed to provide him with the treatment for his diabetes that he is entitled to. Therefore, Defendant's motion for summary judgment must be *granted* and Plaintiff's cross-motion for summary judgment must be *denied*. Counsel for DOC shall provide the Court with a form of final judgment in accordance with V.R.C.P. 58(d).

SO ORDERED this 9th day of March, 2022.



Robert A. Mello
Superior Judge