

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

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| MICHAEL CAMPBELL, Petitioner, vs. ALFRED DUNHAM, Defendant. | No. 4:07-cv-00567-JAJ ORDER |
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This matter comes before the Court pursuant to the September 16, 2010 Report and Recommendation entered by Magistrate Judge Thomas J. Shields, recommending that this Court find in favor of defendant. [Dkt. 45.] After a *de novo* review of the Report and Recommendation, the Court adopts the Report and Recommendation.

I. FACTUAL AND PROCEDURAL HISTORY

In March of 2006, Plaintiff Michael Campbell (“Campbell”) entered the Clarinda Correctional Facility (“CCF”) as an inmate.¹ Upon his entrance into the Iowa Department of Corrections institution, he underwent an initial health and dental review at Oakdale Correctional Facility. Dr. Carl Weilbrenner performed his initial dental exam on March 8, 2006. Dr. Weilbrenner documented that Campbell had seven teeth and Campbell stated that he had no problems with those teeth. On Campbell’s “Dental Encounter” form from this appointment, Dr. Weilbrenner listed all seven teeth to be extracted as a Priority II procedure, and to have upper and lower dentures completed as Priority III procedures. Campbell was transferred to CCF on March 24, 2006 before either procedure took place.

On June 1, 2006, Campbell presented to Dr. Alfred Dunham with a broken tooth.

¹He left CCF in March of 2008 on work release and was paroled in May of 2008.

Dr. Dunham is the director of dental services at CCF, is licensed in both Iowa and Nebraska, and has spent much of his career at CCF. Dr. Dunham told Campbell that all of Campbell's teeth could be removed and then replaced with dentures. Dr. Dunham explained to Campbell that if he removed all seven teeth, then Campbell would be placed on the denture list. He further explained to Campbell that even with no one else on the denture list, it would take at least six to eight weeks for a set of dentures.

Campbell signed a "Dental Surgery Consent" form² and Dr. Dunham removed all seven remaining teeth. He also wrote a ten-day prescription for Ibuprofen and Acetaminophen to reduce the pain associated with surgery, and wrote a five-day prescription for Chlorhexidine Oral Rise to prevent gingivitis, gum bleeding, and gum swelling. After his oral surgery, Campbell followed prison procedures to request his denture fitting. Campbell's request was denied each time but it was explained to Campbell that the denture wait list fluctuated with admission and the release of new inmates.

Dr. Dunham explained that the denture wait list fluctuated because there were five to six hundred inmates at CCF who were listed as priority IIs. He explained that he had to "triage" the needs of dental patients by using the following "Dental Services Overview:"

C. Dental Treatment Priorities

Care and treatment should be provided consistent with the following three priorities and listed examples. The dental practitioner may use their professional judgment to upgrade or downgrade the priority of an offender's dental condition.

²The "Dental Surgery Consent" form states:

I agree to have these teeth extracted with the understanding that these teeth may not be replaced while in the [Department of Corrections]. I am aware denture and partial lists are very long and even if I should qualify to have them for functional purposes, there is no guarantee I will get them while in the [Department of Corrections].

1. Priority I - evaluate and/or treat as quickly as possible, no later than the next working day.
 - a. Incapacitating pain
 - b. Facial swelling
 - c. Oral - facial trauma
 - d. Suspected serious pathological conditions
 - e. Profuse bleeding

2. Priority II - schedule for treatment as soon as possible
 - a. Gross caries requiring extraction, pulpotomy, sedative fillings, or major operative treatment
 - b. Initial treatment phase of periodontitis II, III, IV including scaling, root planning, and oral hygiene instruction
 - c. Endo filing and obturation
 - d. Re-cementing fixed prostheses
 - e. Removable Prosthetics - Reline, Repair

3. Priority III - may be scheduled after all Priority II needs are met.
 - a. Small carious lesions
 - b. Prophylaxis

Specifically as to dentures, the “Dental Services Overview” is as follows:

E. Dentures and Partial

Patients are placed on the denture list at the dentist’s discretion

1. Once dental prosthetic treatment has been undertaken, the offender must be placed on a dental hold so no transfer can take place until the prosthesis is complete.

2. An effort should be made to devote one half day per month or a comparable percentage of time in cases of part-time dental coverage for removable prosthetics.

Dr. Dunham explained that the denture list was flexible and dynamic because inmates move in and out of the system. An inmate may be next on the list for dentures until another

inmate transfers in who entered the system earlier.³

Campbell contends that he was punished and did not receive dentures because he was persistent in asking Dr. Dunham about the status of his dentures. He presented a notarized affidavit at the evidentiary hearing in support from Kenneth Kirkpatrick (“Kirkpatrick”). Kirkpatrick was another CCF inmate who had his teeth extracted three weeks after Campbell on June 23, 2006, but received his dentures on February 4, 2008. Dr. Dunham performed Kirkpatrick’s procedure and both Kirkpatrick and Campbell were inmates at the same time at CCF.

Campbell states that he has lived without teeth since June 1, 2006. He claims that during his incarceration he suffered from burning feces, bruised and bleeding gums, lack of sleep and impaired speech caused by his lack of teeth. Campbell states that he lost weight during his incarceration because he could not masticate properly, but Campbell’s “Weight Flow Sheet” does not show the claimed weight loss. Likewise, Campbell states that his medical condition of hepatitis C made it difficult to comply with his treatment in eating more protein, fruits, and vegetables, because he could not chew these food products while incarcerated.

But in Dr. Dunham’s professional opinion, missing all of one’s teeth is not an emergency medical need because a person does not need teeth to live. He stated that Campbell could only be placed on the denture list once all his teeth were removed. It was also Dr. Dunham’s opinion that Campbell’s teeth were all “bad enough” to extract and, at some point, would have needed to be removed due to risk of infection.

³For example, at the same facility, if Inmate *A* is placed on the denture list on January 1, 2010, then he would have priority over Inmate *B* who is placed on the denture list on January 2, 2010. However, if Inmate *C* transfers in from another facility and Inmate *C* was placed on the denture list on December 31, 2009, then Inmate *C* has priority over Inmate *A*. Thus, the denture list for each facility changes as inmates transfer in and out of the system.

II. CONCLUSIONS OF LAW

A. Arguments

Campbell alleges deliberate indifference in Dr. Dunham's dental treatment by Campbell, pursuant to 42 U.S.C. § 1983. He asserts that Dr. Dunham intentionally failed to provide him with dentures, after removing all his remaining teeth, while incarcerated at CCF. Campbell seeks compensatory and punitive damages, as well as injunctive relief.

Dr. Dunham asserts that he at all times acted with good faith toward Campbell. He argues that he did not violate any of Campbell's clearly established constitutional rights of which a reasonable person would or should have known, and is therefore immune from damages. Dr. Dunham asserts that he was never deliberately indifferent to Campbell's dental treatment or needs.

B. Standard of Review

The court reviews the magistrate judge's report and recommendation pursuant to the statutory standards found in 28 U.S.C. § 636(b)(1):

A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. §636(b)(1); *see* Fed.R.Civ.P. 72(b) (stating identical requirements). The Supreme Court explained:

Any party that desires plenary consideration by the Article III judge of any issue need only ask. Moreover, while the statute does not require the judge to review an issue *de novo* if no objections are filed, it does not preclude further review by the district judge, *sua sponte* or at the request of a party, under a *de novo* or any other standard.

Thomas v. Arn, 474 U.S. 140, 154 (1985). If a party files an objection to the report and recommendation, then the district court must “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” § 636(b)(1). In the absence of an objection, the district court is not required “to give any more consideration to the magistrate’s report than the court considers appropriate.” *Thomas*, 474 U.S. at 150.

The Eighth Circuit Court of Appeals has suggested a district court should review a report and recommendation under a clearly erroneous standard of review. *See Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting when no objections are filed and the time for filing objections has expired, “[the district court judge] would only have to review the findings of the magistrate judge for clear error); *see also* Fed.R.Civ.P. 72(b) advisory committee’s note (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”). The Supreme Court has explained that under the clearly erroneous standard of review, the “foremost principle” “is that ‘[a] finding is “clearly erroneous” when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’” *Anderson v. City of Bessemer City*, 470 U.S. 564, 573–74 (1985) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). It continued that if the lower court’s “account of the evidence is plausible in light of the record viewed in its entirety” then the decision should not be reversed even if, “had it been sitting as the trier of fact, it would have weighed the evidence differently.” *Id.*

C. Analysis

Title 42, Section 1983 of the United States Code provides a remedy for violations of federal rights, or “rights, privileges, or immunities secured by the Constitution and laws [of the United States].” 42 U.S.C. § 1983; *see Maine v. Thiboutot*, 448 U.S. 1, 4 (1980) (holding

§ 1983 provides remedies for federal statutes as well as those provided by the Constitution). A plaintiff must first “identify the specific constitutional right allegedly infringed,” *Graham v. Connor*, 490 U.S. 386, 394 (1989), and then show that the individual who deprived the plaintiff acted under the color of state law. § 1983. Here, because Dr. Dunham works for the State of Iowa at CCF, Campbell need only show that Dr. Dunham infringed a specific constitutional right.

Campbell alleges that Dr. Dunham violated his rights under the Eighth Amendment by deliberately disregarding his need for dentures after removing all of his teeth. The Eighth Amendment of the United States Constitution prohibits “cruel and unusual punishment.” U.S. CONST. amend. VIII. It is well-recognized that prison officials must provide inmates with necessary medical care pursuant to the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Laughlin v. Schriro*, 430 F.3d 927, 928–29 (8th Cir. 2005) (citing *Estelle*, 429 U.S. at 103).

To prevail on a claim that a prison official’s delay in medical care constituted cruel and unusual punishment, “an inmate must show both that: (1) the deprivation alleged was objectively serious; and (b) the prison official was deliberately indifferent to the inmate’s health or safety.” *Laughlin*, 430 F.3d at 929 (citing *Beyerbach v. Sears*, 49 F.3d 1324, 1326 (8th Cir. 1995)); *see also Langford v. Norris*, 614 F.3d 445, 459–60 (8th Cir. 2010) (citing *Gordon ex rel. Gordon v. Frank*, 454 F.3d 858, 862 (8th Cir. 2006) and *Crow v. Montgomery*, 403 F.3d 598, 602 (8th Cir. 2005)); *Nelson v. Shuffman*, 603 F.3d 439, 446 (8th Cir. 2010) (quoting *Irving v. Dormire*, 519 F.3d 441, 446 (8th Cir. 2008)) (“To prove deliberate indifference, an inmate must make a two-part showing: ‘The first requirement tests whether, viewed objectively, the deprivation of rights was sufficiently serious. The second requirement is subjective and requires that the inmate prove that the prison officials had a sufficiently culpable state of mind.’”).

An objectively serious medical need is measured by “the evolving standards of decency that mark the progress of a maturity society.” *Taylor v. Crawford*, 487 F.3d 1072,

1080 (8th Cir. 2007) (quoting *Hudson v. McMillian*, 503 U.S. 1, 8 (1992)). “Because society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are ‘serious.’” *Id.* (citing *Estelle*, 429 U.S. at 103–04), *see e.g.*, *Simmons v. Cook*, 154 F.3d 805, 807 (quoting *Farmer*, 511 U.S. at 832) (“[P]rison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care.”) (alteration in original). “The Eighth Amendment does not guarantee all prisoners medical care commensurate with that enjoyed by civilian populations.” *Hines v. Anderson*, 547 F.3d 915, 922 (8th Cir. 2008). But an objectively serious medical need is one that is either obvious to a layperson or supported by medical evidence. *Aswegan v. Henry*, 49 F.3d 461, 464 (8th Cir. 1995). *See, e.g.*, *Hartsfield v. Colburn*, 371 F.3d 454, 457 (8th Cir. 2004) (inmate presented evidence of serious medical need because he “suffered extreme pain from loose and infected teeth, which caused blood to seep from his gums, swelling, and difficulty sleeping and eating.”).

A lack of dentures can rise to an objectively serious medical need. *See Wynn v. Southward*, 251 F.3d 588, 593 (7th Cir. 2001) (concluding that inmate’s allegations of bleeding, headaches, “disfigurement,” and inability to chew food without dentures demonstrated a serious medical need); *Beem v. Davis*, 289 Fed. Appx. 305, 307 (10th Cir. 2008) (delay in receiving dentures did not exacerbate inmate’s temporal mandibular jaw condition because inmate was “put on a special diet and was able to eat liquefied foods.”). As Magistrate Judge Shields noted in the Report and Recommendation about dentures and dental treatment:

Dental needs, like other medical conditions, range from uncomplicated to threatening. Thus, they may be recognized as a serious medical need in support of a section 1983 deliberate indifference claim. For example, the Eighth Circuit in *Boyd v. Knox*, found that for another dental procedure a three week delay in dental care supported an Eighth Amendment violation. *Boyd v. Knox*, 47 F.3d 966, 969 (8th Cir. 1995). More specific to dentures, courts outside the Eighth Circuit have found that,

under certain circumstances, lack of dentures or delay in their production constitutes a serious medical need. *See Maclary v. Allen*, 2005 WL 2978610, at *2 (D. Del. Nov. 7, 2005) (holding that lack of dentures for over a year was a condition which a lay person would easily recognize as needing a dentist’s attention, and was thus a serious medical need. Furthermore, the prisoner alleged that he was unable to chew his food, significantly hindering his ability to eat and therefore lack of dentures “could be expected to lead to substantial and unnecessary suffering and is thus a serious medical need.”); *Gasaway v. Dist. of Columbia*, 1996 WL 225699, at *2 (D.D.C. Apr. 29, 1996) (holding that having no upper teeth and only six lower teeth for 14 months before being provided by the prison with dentures that had been prescribed constituted serious medical need); *Dean v. Coughlin*, 623 F. Supp. 392, 401 (S.D.N.Y. 1985) (enjoining prison system to provide adequate care for prisoners’ serious dental needs, including the provision of dentures in a timely fashion); *but see Harter v. Davis*, 2008 WL 786742, at *7 (E.D. Mich. Mar. 24, 2008) (granting prison officials summary judgment where medical records belied Plaintiff’s claim that he suffered severe symptoms due to lack of dentures for approximately 18 months). While these later cases are not authoritative, they do suggest that a lay person finds a lack of teeth/dentures for a substantial period of time is an objectively serious medical need.

[Dkt. 45 at 8–9.]

The Court next considers the second prong of a section 1983 claim. Deliberate indifference to an inmate’s serious medical needs violates the Eighth Amendment’s ban against cruel and unusual punishments. *Krout v. Goemmer*, 583 F.3d 557, 567 (8th Cir. 2009) (citing *Farmer v. Brennan*, 511 U.S. 825, 828 (1994)). Deliberate indifference can occur if an official “actually knows of the substantial risk and fails to respond reasonably to it.” *Young v. Selk*, 508 F.3d 868, 873 (8th Cir. 2007). “The question of whether the official knew of the substantial risk is a factual one ‘subject to demonstration in the usual ways, including inference from circumstantial evidence.’” *Nelson*, 603 F.3d at 447 (citing

Young, 508 F.3d at 873). “This is true whether the indifference is manifested by prison doctors in their response to the prisoner’s needs or by prison guards intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.” *Orr v. Larkins*, 610 F.3d 1032, 1035 (8th Cir. 2010) (quoting *Estelle*, 429 U.S. at 104–05). Moreover, “in order to have a viable deliberate indifference claim, a plaintiff is *not* required to allege and prove that the defendant . . . specifically knew about or anticipated the precise source of the harm.” *Kahle v. Leonard*, 477 F.3d 544, 551 (8th Cir. 2007) (quoting *Krein v. Norris*, 309 F.3d 487, 491 (8th Cir. 2002)).

In the context of medical care, “[d]eliberate indifference may include intentionally denying or delaying access to medical care, or intentionally interfering with treatment or medication that has been prescribed,” but “a showing of deliberate indifference is greater than gross negligence and requires more than mere disagreement with treatment decisions.” *Pietrafeso v. Lawrence County*, 452 F.3d 978, 983 (8th Cir. 2006). Likewise, an inmate cannot base a deliberate indifference claim based on his own opinion as to what dental treatment he should have received or on the dentist’s alleged negligence. *See Alberson v. Norris*, 458 F.3d 762, 765 (8th Cir. 2006) (to establish deliberate indifference, plaintiff must show more than even gross negligence); *Long v. Nix*, 86 F.3d 761, 765 (8th Cir. 1996) (inmates have no constitutional right to a particular type of treatment). “[A] mere disagreement over the timing and type of dental treatment is not actionable.” *Riley v. Knox*, 205 F.3d 1347, at *1 (8th Cir. 2000) (citing *Long v. Nix*, 86 F.3d 761, 765 (8th Cir. 1996)) (unpublished); *but see Patterson v. Pearson*, 19 F.3d 439, 440 (8th Cir. 1994) (summary judgment reversed because refusal to provide follow-up dental care despite knowledge inmate suffering extreme pain could support a finding of an Eighth Amendment deprivation).

Here, the Court examines Campbell’s deliberate indifference claim under the two prongs established in *Laughlin*, 430 F.3d at 929. First, Campbell must establish that his lack of dentures was objectively serious, measured by the standards of a layperson or supported

by medical evidence. *Id.* Next, Campbell must demonstrate that Dr. Dunham was deliberately indifferent to Campbell's medical need for dentures. *Id.* If Campbell successfully demonstrates these two requirements, then Campbell has successfully shown that Dr. Dunham violated his Eighth Amendment right against cruel and unusual punishment.

Magistrate Judge Shields found that Campbell failed to meet both requirements:

[T]he evidence presented by Campbell fails to establish that Dr. Dunham violated his federally protected right to be free from cruel and unusual punishment. In general, the testimony from both Campbell and Dr. Dunham appears credible. Campbell's lack of dentures for a period of time lasting nearly four years, including the diminished ability to eat, may have risen to the level of an objectively serious medical need. However, Dr. Dunham took sufficient precautions in response to this need to prevent a finding that he acted deliberately indifference [sic] to Campbell's need for dentures.

[Dkt. 45 at 11.] Although no objections were filed and this Court could review the Report and Recommendation under a clearly erroneous standard, this Court review the record *de novo*.

Magistrate Judge Shields acknowledged that there was an absence of Eighth Circuit law specifically regarding whether a lack of dentures constitutes a serious medical need. But he concluded that Campbell's lack of dentures did "significantly hinder[] his ability to chew food, which resulted in his diminished ability to eat." *Id.* Also, that twenty-one months in such a condition would be "so obvious that a layperson would recognize the need for a doctor's attention." *Id.* (citing *Aswegan*, 49 F.3d at 464). Pursuant to a *de novo* review, the Court finds that a layperson would likely find that twenty-one months (while at CCF) without teeth does constitute an objectively serious medical need. *See Aswegan*, 49 F.3d at 464.

Next, the Court reviews the record to determine if Dr. Dunham was deliberately indifferent in failing to provide dentures to Campbell. Magistrate Judge Shields concluded that Dr. Dunham had the requisite knowledge for deliberate indifference because he "may

have known of the substantial risk by the very fact that the risk [of having no teeth] was obvious” and noted that “Dr. Dunham even testified to the necessity of teeth for health reasons in certain inmate situations.” [Dkt. 45 at 12–13.] But he found that Dr. Dunham “acted reasonably to prevent future harm to Campbell” because he “took reasonable measures to prevent any future harm occurring to Campbell by placing him on the denture list as soon as possible and supplying him with the proper medication to alleviate the pain from having his teeth removed.” *Id.* He stated that Dr. Dunham employed “reasonable measures” to protect Campbell. *Id.*

Magistrate Judge Shields also addressed Campbell’s contention that Dr. Dunham was deliberately indifferent in that Kirkpatrick allegedly received dentures before Campbell, which would be against the stated Iowa Department of Corrections procedures. He found that there was insufficient evidence in the record to support a finding that Dr. Dunham was deliberately indifferent because of this anomaly. As Magistrate Judge Shields held, Kirkpatrick receiving dentures before Campbell was, at most, “perhaps the mistaken negligence of the dental priority list.” *Id.* at 13–14.

In looking at the record *de novo*, this Court finds that Dr. Dunham was not deliberately indifferent to Campbell. Campbell entered CCF with only seven teeth and chose the course of action to remove his teeth, knowing that he would be placed on a denture waiting list. When Campbell elected for the procedure to remove all seven teeth, he had no assurances that he would receive dentures according to a fixed schedule, or would even receive dentures before leaving CCF.

Moreover, this Court finds that a lack of resources is not grounds to deny constitutionally required treatment or services. However, Dr. Dunham does not fund treatment and he provided good care to Campbell while Campbell was in custody. Campbell received pain medication for his procedure and oral mouth rinse to reduce the possibility of infection following the procedure. While Campbell has been without teeth since June of 2006, Dr. Dunham can only be responsible for the twenty-one months that Campbell was

incarcerated at CCF. He was warned of the potential delay in receiving dentures and there is no medical evidence to support Campbell's claim that he was harmed by the delay.

Likewise, even if Kirkpatrick did "skip" Campbell on the denture list at CCF, the record does not suggest that this amounted to deliberate indifference to any serious medical need. Dr. Dunham's testimony indicated that the denture list was imperfect and if a patient could not be contacted, then the next person on the list would be scheduled for a procedure.⁴ At best, Kirkpatrick receiving dentures before Campbell would be negligent and a showing of deliberate indifference must be more than even gross negligence. *See Pietrafeso*, 452 F.3d at 983.

For these reasons, this Court finds that Dr. Dunham was not deliberately indifferent. There is scant evidence to suggest that Dr. Dunham's failure to equip Campbell with dentures was because he was deliberately indifferent. Because the Court finds that Campbell cannot successfully demonstrate both prongs of a prison official's delay in medical treatment constituting cruel and unusual punishment, Campbell cannot prevail on his Eighth Amendment claim.

Upon the foregoing,

IT IS ORDERED that the Court adopts the September 16, 2010 Report and Recommendation recommending the Court find in favor of defendant. The Clerk of Court shall enter judgment in favor of defendant.

DATED this 27th day of October, 2010.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA

⁴Dr. Dunham also had the assistance of only one secretary/dental assistant. She would be the person scheduling appointments for the inmates.