

JURISDICTION AND VENUE

1. This action for injunctive and monetary relief is brought pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201, 2202, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. and Pennsylvania state law prohibiting medical malpractice.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 over the constitutional claims as well as those arising under 42 U.S.C. § 1983 and 42 U.S.C. § 12132. The Plaintiff further invokes the supplemental jurisdiction of this Court under 28 U.S.C. Section 1367(a) to hear and adjudicate state law claims.

3. This Court is the appropriate venue pursuant to 28 U.S.C. § 1391(b)(2) because the events and omissions giving rise to the claims occurred Crawford County, Pennsylvania within the Western District.

PARTIES

4. Plaintiff Tracey Nadirah Shaw is a 48-year-old woman currently incarcerated at State Correctional Institution (“SCI”) Cambridge Springs, a minimum security women’s prison operated by the Pennsylvania Department of Corrections (“DOC”).

5. Defendant Dr. Lawrence Alpert is a doctor at SCI Cambridge Springs. Dr. Alpert is sued in his individual and official capacity.

6. Defendant Dr. Rebecca Burdette was a doctor at SCI Cambridge Springs. Dr. Burdette is sued in her individual capacity.

7. Defendant Pennsylvania Department of Corrections (“DOC”) is an agency of the State of Pennsylvania that operates SCI Cambridge Springs and receives federal funding. The principal office for the DOC is located in Mechanicsburg, Pennsylvania.

STATEMENT OF FACTS

Ms. Shaw's Chronic Pain and Diminished Mobility

8. Throughout her incarceration Ms. Shaw has experienced progressively worsening chronic neuropathic pain in her back, neck, legs, and pelvic area caused by serious medical conditions including spinal stenosis¹, osteoarthritis of the spine², degenerative joint disease in her hips, fibromyalgia³, and a herniated disc⁴.

9. This extensive pain causes Ms. Shaw substantial difficulties in standing and walking.

10. The pain is at times accompanied by numbness and tingling in her arms and legs, as well as weakness in her legs, further diminishing Ms. Shaw's ability to walk without risk of falling and suffering additional injury.

11. Ms. Shaw's conditions have long been known and diagnosed by DOC medical personnel.

¹ Spinal stenosis is a narrowing of the open spaces within the spine that puts pressure on the spinal cord and the nerves that travel through the spine. Spinal stenosis can cause serious neuropathic pain. See Mayo Clinic, Spinal Stenosis, available at <http://www.mayoclinic.org/diseases-conditions/spinal-stenosis/basics/definition/con-20036105>.

² Osteoarthritis is a condition where the protective cartilage on the ends of the bones wears down over time. See Mayo Clinic, Osteoarthritis Overview, available at: <http://www.mayoclinic.org/diseases-conditions/osteoarthritis/home/ovc-20198248>.

³ Fibromyalgia is a disorder characterized by widespread musculoskeletal pain. See Mayo Clinic, Fibromyalgia Overview, available at <http://www.mayoclinic.org/diseases-conditions/fibromyalgia/home/ovc-20317786>.

⁴ A herniated disc occurs when the fibrous portion of the disc ruptures and the jelly-like core squeezes out, causing great pain. See The Neurological Institute of New York, "Herniated Disc (cervical, thoracic, and lumbar)," available at <http://columbiaspine.org/condition/herniated-disc/>.

12. In approximately 2007, Ms. Shaw was prescribed Lyrica to treat her chronic neuropathic back pain by medical staff at SCI Muncy.

13. There are no generic versions of Lyrica or its' active ingredient, pregablin.

14. Lyrica has been approved by the Food and Drug Administration ("FDA") for treating, among other things, fibromyalgia and "pain from damaged nerves (neuropathic pain) that follows from spinal cord injury."⁵

15. Lyrica is the only medication prescribed by DOC medical staff to Ms. Shaw that is recognized by the FDA as a treatment for neuropathic pain caused by spinal cord injury.

16. Lyrica was an effective medication for managing Ms. Shaw's chronic pain when administered at a dosage of 225 mg twice per day.

17. While taking Lyrica, Ms. Shaw was able to perform the normal activities of her daily life without excruciating pain.

18. The Lyrica prescription allowed her to experience greater flexibility in her back and legs as well as improved mobility.

19. Lyrica also enabled her to walk longer distances without risk of her legs giving out and causing her to fall.

Abrupt and Unexplained Termination of Lyrica

20. In October 2015, Ms. Shaw's Lyrica prescription of 225 mg per day was to continue until April 4, 2016.

21. On October 8, 2015, without a physical examination or prior discussion with Ms. Shaw, Defendant Burdette terminated the Lyrica prescription.

⁵ FDA Medication Guide for Lyrica, available at:
<https://www.fda.gov/downloads/drugs/drugsafety/ucm152825.pdf>.

22. Defendant Burdette terminated her prescription despite there being no change in Ms. Shaw's degenerative conditions that cause the severe, chronic pain addressed by the Lyrica prescription.

23. A note in Ms. Shaw's medical records simply states that the Lyrica prescription was "not medically necessary."

24. Defendant Burdette terminated Ms. Shaw's Lyrica prescription without prescribing an alternative to treat her severe neuropathic pain.

25. Following the termination of her Lyrica prescription, Ms. Shaw repeatedly complained about back pain and repeatedly requested Lyrica from medical staff, including from Defendants Burdette and Alpert.

26. Defendants Burdette and Alpert were aware of her need for pain management based on her diagnoses, her continuous complaints of pain, and the history of treatment for her chronic pain in DOC medical records.

27. Ms. Shaw complained about her substantial chronic pain and its effects on her daily life including disruption in her mood, ability to sleep, reduced appetite and mental health concerns on at least three separate occasions in November and December 2015.

28. Ms. Shaw continued to request pain management throughout 2016 in over a dozen documented visits to the medical department and requests for medical care and accommodations. Ms. Shaw specifically asked for her Lyrica prescription to be reinstated on December 9, 2015, August 26, October 11, 12, November 16, December 6 and 16, 2016.

29. On August 26, 2016, Nurse Rockwood noted that according to Ms. Shaw past prescriptions of Pamelor and Cymbalta were ineffective in treating her pain.

30. Nurse Rockwood further documented that Ms. Shaw described suffering from “pain, burning/numbness in bilateral arms, bilateral legs, feet and fingers x 10 years. Worsened in last 1 year. . . . She reports daily pain. . . . The pain waxes and wanes in severity. . . . Lyrica was only drug that helped her.”

31. On that same day, Nurse Rockwood recommended Ms. Shaw be given an elevator pass and sit down pass for med line for 6 months.

32. An elevator pass permits a prisoner to use the elevator rather than the steps when traveling from one floor of the prison to another.

33. A sit down pass permits a prisoner to sit without losing her place in line while waiting for medications to be distributed.

34. Despite her numerous pleas, between September 2015 and September 2016, Ms. Shaw received no treatment for her chronic pain.

35. In or about September 2016, Ms. Shaw was prescribed Relafen and Trileptal for her pain by Defendant Alpert.

36. Relafen is an anti-inflammatory medication that does not treat neuropathy.⁶

37. Similarly, Trileptal is an anticonvulsant that has no significant effect on neuropathic pain as recognized by a 2013 study.⁷

38. Neither medication was effective in treating her chronic and worsening back pain, a fact that Ms. Shaw conveyed to medical staff – including Defendant Alpert – on multiple occasions.

⁶ FDA Medication Guide for Non-Steroidal Anti-Inflammatory Drugs (NSAIDs), available at: <https://www.fda.gov/downloads/drugs/drugsafety/postmarketdrugsafetyinformationforpatientsandproviders/ucm106241.pdf>.

⁷ “Oxcarbazepine for neuropathic pain,” Cochrane, March 28, 2013, accessed at: http://www.cochrane.org/CD007963/NEUROMUSC_oxcarbazepine-for-neuropathic-pain.

39. On October 12, 2016, in recognition of the significant difficulty Ms. Shaw experienced walking due to her chronic pain, Defendant Alpert prescribed her a wheelchair for long walks.

40. Ms. Shaw was prescribed the Trileptal and Relafen until the prescriptions expired in December 2016 and January 2017 respectively.

41. Her deteriorating condition was acknowledged by medical staff through the provision of various accommodations intended to relieve her of the stress and risk of prolonged standing and walking longer distances.

42. Despite the ongoing pain and worsening of her condition, Defendant Alpert refused to reinstate the Lyrica prescription, although this is the only medication historically effective at treating her debilitating pain.

43. Ms. Shaw's appeals for Lyrica to manage her devastating chronic pain persisted in 2017, including at least three separate requests to Defendant Alpert in January 2017 alone.

44. Ms. Shaw also sought treatment for her chronic pain via reinstatement of her Lyrica prescription by raising her concerns with the administration at SCI Cambridge springs on multiple occasions.

45. Ms. Shaw's legal counsel also made numerous phone calls and sent letters to staff at SCI Cambridge Springs in 2016 and throughout 2017 requesting that her Lyrica prescription be reinstated.

46. For sixteen of the twenty-two months since Ms. Shaw's Lyrica prescription was terminated after eight years of proven effectiveness in managing her chronic, severe pain, Defendants failed to provide Ms. Shaw with any treatment whatsoever.

47. Dr. Alpert deliberately provided Ms. Shaw with medications that were less effective than Lyrica.

48. When Ms. Shaw reported to him and other medical staff via oral complaint, written request, or letter from counsel that these medications were having no effect, he did not take any action to address her chronic pain, nor did he consider providing the medication that the DOC itself recognized as an effective and appropriate medication for treating her chronic, severe neuropathic pain for eight years.

49. On or about April 2017, Ms. Shaw was visited by a physical therapist who attempted to teach her exercises to assist her with her pain and mobility issues.

50. However, Ms. Shaw could not complete the exercises because the pain was too intense. As a result, the physical therapist referred her to the doctor for additional treatment of her chronic pain.

51. In May 2017, a new doctor at the prison, Dr. Alley, reinstated Ms. Shaw's prescription for Lyrica, albeit at only 75 mg. twice a day.

52. Dr. Alley also conducted a physical examination of Ms. Shaw, applying his hands to pressure points so as to assess her pain sensitivity. Upon completion of the examination Dr. Alley diagnosed Ms. Shaw with fibromyalgia.

53. On or about May 26, 2017, Ms. Shaw began receiving Lyrica at 75 mg. twice per day.

54. At this dosage, which is one-third of the 225 mg twice per day dosage she previously received, the medication is ineffective for managing Ms. Shaw's pain.

55. Prior to Ms. Shaw being able to address the issue with Dr. Alley, he left and did not return.

56. Instead, Defendant Alpert returned to his former position as medical director at the prison.

57. When Ms. Shaw saw Dr. Alpert on July 24, 2017, he informed her that he never wanted her to have the Lyrica and that he would not increase the dosage or extend the medication beyond its current prescription date.

58. During this visit Dr. Alpert informed Ms. Shaw that Lyrica is not prescribed for her conditions despite the FDA approving it for use in treating neuropathic back pain and fibromyalgia.

59. Dr. Alpert compared continued use of Lyrica to using heroin or opium to treat pain, and said he could not keep Ms. Shaw on Lyrica since she is serving a lengthy sentence.

60. Lyrica is not an opioid and does not have addictive characteristics.

61. Dr. Alpert once more prescribed Ms. Shaw Relafen, along with a muscle relaxer, Robaxin, neither of which have been effective in the past.

62. These prescriptions expired at the end of July 2017.

63. At no time did Defendant Alpert conduct a physical examination of Ms. Shaw, or acknowledge that Dr. Alley had diagnosed her with fibromyalgia.

64. Defendant Alpert continues to refuse to appropriately treat Ms. Shaw's chronic pain, only occasionally offering medications he knows are ineffective, and deliberately refusing her the one medication that was effective when prescribed at a high enough dosage.

65. For example, after Ms. Shaw fell and broke her ankle, discussed *infra*, she again fell while using the bathroom during the night of August 14, 2017.

66. The following day she told Defendant Alpert that she was in greater pain since the fall the night before.

67. Without performing any physical examination, Defendant Alpert responded to Ms. Shaw's complaints of additional pain by lowering her prescription for Tylenol from 650 mg every 4 hours to 325 mg every 6 hours.

Discriminatory Job Removal in Violation of the Americans With Disabilities Act

68. Ms. Shaw is an individual with a disability as her severe chronic neuropathic pain and fibromyalgia substantially limit her mobility and her ability to walk from place to place.

69. On or about December 23, 2016, a decision was made to strip Ms. Shaw of her job purportedly because her medical conditions were suddenly too serious to permit her to perform basic janitorial tasks as a block worker on the honor unit where she resides.

70. Ms. Shaw was deprived of her job as a block worker inexplicably days after her wheelchair was taken due to a determination that her condition did not require it to assist in traveling distances,

71. This deprivation also occurred only an hour after legal counsel placed yet another call to SCI Cambridge Springs advocating return of the wheelchair and attention to her medical needs.

72. The job was taken due to "medical restrictions," although Ms. Shaw has the same medical restrictions she has had for years while successfully working the job.

73. On February 1, 2017, counsel for Ms. Shaw sent a letter to former Superintendent Torma and Defendants Alpert, which described, *inter alia*, how the deprivation of her job without replacement violated her rights under the ADA.

74. On February 15, 2017, Defendant Alpert added additional medical restrictions in Ms. Shaw's medical records without conducting a medical examination.

75. Ms. Shaw was stripped of her job because of her physical disabilities and without any substitute employment being provided to accommodate her condition.

76. Ms. Shaw was not evaluated or diagnosed with any new conditions or restrictions prior to her job removal.

77. She was still permitted to work in the General Labor Pool, wherein inmates can be assigned to jobs on an ad hoc basis, which could involve more physically onerous labor.

78. In May 2017, Ms. Shaw's job was finally reinstated.

79. As a consequence of not having the wheelchair, as discussed *supra*, Ms. Shaw has fell while walking long distances, injuring herself, and she has missed an extraordinary amount of meals.

80. Without her job or a replacement, Ms. Shaw was deprived the meager compensation available from prison labor, which she needed to purchase commissary to supplement her diet.

Denial of Mobility Assisting Accommodations in Violation of the Americans with Disabilities Act

81. Ms. Shaw has been granted the use of a cane to assist her in walking for more than 10 years.

82. As a result of her worsening condition after the termination of her Lyrica prescription, Ms. Shaw has suffered increased pain and difficulty walking, including weakness and the risk of falling when attempting to walk longer distances such as to the dining hall.

83. Correspondingly, the DOC has at times previously granted Ms. Shaw accommodations.

84. On August 26, 2016, Nurse Rockwood approved an elevator pass and a sit down pass for Ms. Shaw, the latter permitting her to sit while waiting in line for her medications so she does not have to be on her feet for 15 minutes or longer and thereby risk falling.

85. The elevator pass was renewed in subsequent months, including on September 15, October 15, and November 15, 2016.

86. Ms. Shaw was granted the use of a wheelchair in October 2016 to assist her in traveling longer distances in the prison

87. On November 27, 2016, Ms. Shaw sought renewal of her use of the wheelchair in a request to Defendant Alpert, writing that she “need[s] the wheel chair to be renewed because I am in chronic pain and I hurt even more when I am walking for long.”

88. Ms. Shaw also sought renewal of use of the wheelchair via the filing of a disability accommodation request form, which was granted on December 6, 2016.

89. This renewal was effective for another 60 days, until February 4, 2017.

90. On or about December 15, 2016, Corrections Health Care Administrator (“CHCA”) Anderson told Ms. Shaw that she should not be filing paperwork for accommodations or treatment of her medical issues, and complained that it was forcing her to respond to the filings of Ms. Shaw.

91. On December 16, 2016, the day after CHCA Anderson reproached Ms. Shaw for exercising her constitutionally and statutorily protected rights to file grievances and disability accommodation requests, Defendant Alpert ordered her wheelchair taken from her.

92. Defendant Alpert ordered the wheelchair taken away without any medical evaluation of Ms. Shaw.

93. When Nurse Rockwood took away the wheelchair, she explained that it was on the orders of Defendant Alpert and CHCA Anderson because Ms. Shaw was standing when she spoke to Ms. Anderson the previous day.

94. However, both CHCA Anderson and Defendant Alpert are fully aware that Ms. Shaw was provided the wheelchair to assist her in traveling long distances, not because she cannot stand.

95. The following day, Ms. Shaw almost fell when walking over ice on the way to wait in line for her medications, a trip during which she normally utilized her wheelchair to avoid the risk of falling.

96. Ms. Shaw has repeatedly requested the re-authorization for use of the wheelchair for traveling longer distances.

97. In January 2017, Ms. Shaw advised the administration of SCI Cambridge Springs that “on January 14, 2017 [] I had collapsed on the floor in my room due to the chronic pain radiating in my legs after having a half day of walking due to my daily activities.”

98. As a result of not having use of a wheelchair for traveling longer distances, Ms. Shaw consistently misses meals due to the pain of walking to the dining hall and the increased risk of falling.

99. On most days, Ms. Shaw misses at least two of the three meals offered because of her disability and the removal of her wheelchair accommodation.

100. There are also several days where Ms. Shaw misses all three meals offered.

101. Since her wheelchair was taken on December 16, 2016, Ms. Shaw has lost more than 20 pounds due to her inability to attend meals in the cafeteria.

102. Unsurprisingly, Ms. Shaw fell and sustained injuries requiring immediate medical attention on Saturday, January 14, 2017, after attending a performance that required a long walk from her unit.

103. Dr. Alpert still refused to give her a wheelchair even though he kept her in the infirmary for a day and a night following her fall.

104. On March 24, 2017, when Ms. Shaw attempted to go to the dining hall, she almost fell multiple times.

105. Because of her obvious distress and difficulty walking, corrections officers obtained a wheelchair for Ms. Shaw to use in order to safely return to her unit

106. In addition to missing meals offered in the cafeteria, Ms. Shaw is unable to attend yard, has had to miss GED class, as well as religious services and other institutional program offerings.

107. On July 24, 2017, Dr. Alpert again refused Ms. Shaw's request for the use of a wheelchair to travel distances.

108. He also refused to provide her with a sit-down pass for waiting in line for her medications, and he denied her an elevator pass.

109. On July 29, 2017, Ms. Shaw was prohibited from being able to sit during medication line.

110. A corrections officer informed Ms. Shaw that Dr. Anderson had informed him that Ms. Shaw did not have a sit down pass.

111. Walking across campus to the medication line and standing for at least 15 minutes in line before walking back to the unit three times per day to receive her medications is extremely painful and burdensome to Ms. Shaw.

112. On July 30, 2017, a corrections officer told Ms. Shaw that she could not use the wheelchair she had brought with her to use while in evening med line since Dr. Anderson had said she is not permitted to use the wheelchair.

113. Upon return to her housing unit, Ms. Shaw was speaking with a corrections officer when her legs gave out.

114. Ms. Shaw fell and broke her leg, requiring surgery and the insertion of 6 screws in her leg.

115. As a result of this injury, Ms. Shaw has been temporarily granted the use of a wheelchair while her foot remains in a cast.

CAUSES OF ACTION

COUNT I – Discrimination by a Public Entity in Violation of Americans with Disabilities Act

(Against Defendant Pennsylvania Department of Corrections)

116. Paragraphs 1 through 115 of this Complaint are included as if stated in this paragraph.

117. Ms. Shaw is a qualified individual with a disability, severe chronic back and leg pain, which, *inter alia*, substantially limits the major life activity of walking.

118. Defendant Pennsylvania Department of Corrections discriminated against Plaintiff Tracey Shaw by removing her from her job on the basis of her disability without offering a replacement in violation of Title II of the Americans with Disabilities Act.

119. Further, Defendant Pennsylvania Department of Corrections failed to provide Plaintiff Tracey Shaw with reasonable accommodations for her disability, causing her to be excluded from participation in programs and denied services of a public entity

**COUNT II – Deprivation of the Eighth Amendment Right Not to Undergo Cruel
and Unusual Punishment**
(Against Defendants Alpert and Burdette)

120. Paragraphs 1 through 115 of this Complaint are included as if stated in this paragraph.

121. Defendants Burdette knew of and was deliberately indifferent to Plaintiff Shaw's serious medical need for pain management by terminating her prescription to Lyrica without medical justification.

122. Defendant Alpert knew of and is deliberately indifferent to Plaintiff Shaw's serious medical need for pain management by refusing to reinstate her prescription to Lyrica at an effective dosage without medical justification.

123. These failures to provide Ms. Shaw with adequate medical care violated, and continue to violate, her Eighth Amendment rights under the United States Constitution.

COUNT III – Medical Malpractice
(Against Defendants Alpert and Burdette)

124. Paragraphs 1 through 115 of this Complaint are included as if stated in this paragraph.

125. Defendant Burdette deviated from the standard of care by terminating Ms. Shaw's prescription to Lyrica without medical justification despite Defendant Burdette's knowledge that Ms. Shaw suffered from chronic, serious medical conditions that were being effectively treated by Lyrica. Defendant Burdette's decision exposed Ms. Shaw to an increased risk of injury, pain and suffering, and did cause Ms. Shaw increased and unnecessary pain, suffering, and injury.

126. Defendant Alpert deviated from the standard of care by refusing to reinstate her prescription to Lyrica without medical justification despite Defendant Alpert's knowledge that Ms. Shaw suffered from chronic, serious medical conditions that were being effectively treated

by Lyrica. Defendant Alpert has either refused any treatment for Ms. Shaw's chronic pain or knowingly provided medications which are utterly ineffective. Defendant Alpert's decisions have exposed Ms. Shaw to an increased risk of injury, pain and suffering, and are causing Ms. Shaw increased and unnecessary pain, suffering, and injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Tracey Nadirah Shaw requests that the Court grant the following relief:

1. Declaratory judgment that Defendants violated Ms. Shaw's constitutional and statutory rights;
2. Injunctive relief reinstating her prescription to Lyrica at the medically necessary dosage and other medical care as necessary for the treatment of her chronic pain;
3. Injunctive relief reinstating the provision of a wheelchair and other accommodations for her mobility impairment as necessary;
4. An award of appropriate compensatory and punitive damages against Defendants in favor of Ms. Shaw in an amount to be determined by the finder of fact;
5. Reasonable attorneys' fees and costs;
6. Such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Bret Grote

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