

FEDERAL COURT FINDS PENNSYLVANIA DOC HEPATITIS C PROTOCOL UNCONSTITUTIONAL BUT DENIES INJUNCTION

In mid-2015 Mumia Abu Jamal filed a lawsuit in the United States District Court for the Middle District of Pennsylvania requesting that the Pennsylvania Department of Corrections (“DOC”) provide him with life-saving medication to cure his hepatitis C. *Abu-Jamal v. Kerestes, et al.*, 15 Civ. 0967 In a decision issued today, August 31, United States District Court Judge Robert D. Mariani denied Mumia’s request for a preliminary injunction requested that medication while at the same time finding that the DOC’s protocol for treating inmates with hepatitis C falls below constitutional standards. Judge Mariani denied the motion on the ground that the individuals currently being sued, the Warden of SCI Mahanoy, the Director of Health Care for the DOC, the Director of Health Care at SCI Mahanoy, and various medical staff would not have the authority to carry out any injunction.

In October 2015, the DOC adopted a protocol for treating inmates with hepatitis C. Under it, only inmates with advanced, decompensated cirrhosis with bleeding are given the hepatitis C anti-virals that have a 90-95% cure rate. As Judge Mariani found:

DOC’s treatment protocol as currently adopted and implemented fails to provide treatment for hepatitis C through the administration of DAA (Direct-Acting Anti-Viral’) medications such as Harvoni, Sovaldi and Viekira Pak until an inmate, including Plaintiff, has progressed to the stage of advanced compensated cirrhosis or early decompensated cirrhosis manifested by esophageal varices. As such, the interim Hepatitis C protocol presents a conscious disregard of a known risk of advanced cirrhosis and death by esophageal varices. (Emphasis added)

...The protocol as currently adopted and implemented presents deliberate indifference to the known risks which follow from untreated hepatitis C

...the interim protocol prolongs the suffering of those who have been diagnosed with chronic Hepatitis C and allows the progression of the disease to accelerate so that it presents a greater threat of cirrhosis, hepatocellular carcinoma, and death of the inmate with such disease.

(Excerpted from Opinion).

In denying the injunction, Judge Mariani found that the members of the DOC’s Hepatitis C committee – an entity whose existence was unknown until near the end of the December 2015 evidentiary hearing – would be the proper defendants. It should be noted that currently pending before the Court is a motion to add as a defendant DOC Director of Clinical Services Paul Noel, who is a member of the Hepatitis C committee, as a defendant. In addition, at no time during the litigation has the DOC argued that the defendants who had been named could not carry out an injunction.

While we are disappointed that Judge Mariani did not issue an injunction, it is important that the court recognized, and found, that the Pennsylvania DOC is denying individuals for whom they are responsible adequate health care as guaranteed by the Eighth Amendment of the United States

Constitution. Irrespective of the injunction, the Pennsylvania DOC can choose to comply with the Constitution and provide life-saving drugs to Mumia Abu Jamal and to all who suffer from hepatitis C.

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