

William Walton Jay

March 14, 2016

: Claim of Estate of Michael S. Jay: File Nos. 22978 and 22979

The Department of Corrections and the Department of Social Services are guilty of medical malpractice, intentional tort, and gross negligence towards the decedent Michael S. Jay, Inmate # 357990. DOC withheld Jay's medical prescriptions that he was taking as prescribed by his Title XIX Medicaid primary care physician, Helar E. Campos, MD. Jay rolled his Jeep Wrangler at Exit 74 northbound on I 95 in January 2000. Because he was not wearing a seat belt, he was thrown from the vehicle into a 3 strand wire guard rail. He suffered a bilateral broken pelvis (both sides of the spine), a broken right hip, and a fractured scapula.

He was treated at the Trauma Center at William W. Backus Hospital in Norwich and then operated upon by Dr. William Balcolm, Norwich Orthopedic Group, who stabilized the hip and pelvis using metal pins, screws and surgical glue. Jay was then prematurely discharged into a blizzard several days later when the hospital's business office learned that he was uninsured-- rather than still on the Claimant/Father's health insurance. Boat. Claimant protested Jay's being discharged prematurely from a medical standpoint, and into the teeth of a severe blizzard that closed I 395 soon after Claimant drove Jay to their home in Groton.

When Jay attempted to climb two tall concrete steps into Claimant's duplex, aided on both sides, Jay slipped and fell hitting his left shoulder on the outside faucet, fracturing it and soaking himself in the process. Claimant dragged Jay to the 2nd floor bathroom, laid him in the tub and ran it full of hot water to prevent Jay's going into shock. Neighbor called 911 and wrapped Jay in blankets for the ambulance ride back to Backus Hospital. Jay was re-admitted and remained several days during which Claimant filled out the necessary 18 page application to DSS in order for Jay to be treated under Medicaid. A visiting nurse came to our Groton duplex and spent 1 hour demonstrating exercises Jay should do while still in his wheelchair. Jay continued his tattoo apprenticeship at Flat's Tattoos while confined to his wheelchair.

In July 2000, Dr. Balcolm operated again on Jay and removed most of the medical hardware he had placed in Jay's hip and pelvis in January. The scapula healed itself in place. Jay spent one or two days after the operation recovering, then returned to Claimant's duplex and resumed working as a tattoo artist at Guy Flatley's shop using crutches, then a cane to get around. Title XIX Medicaid [i.e. DSS] paid for these 2000 operations. The significance thereof, besides the fact that Jay suffered greatly over the years from post operative pain in both his hip and pelvis, plus pain in both broken shoulders, is that DSS became familiar with Jay and opened a file on him having reviewed his Social Security card and CT driver's license. Hence, in 2009 when he had further injuries, he again produced for DSS inspection and files his Social Security card and current CT driver's license. Thus, in November 2011 when Jay was driven by Claimant's long time friend, Ms. Andrea Carey, to DSS headquarters at Uncas on Thames in Norwich with only his DOC prison photo ID, DSS wrongfully denied him service upon the basis that he could not produce his SSA card (which it turned out after his death) was with his personal effects in a locked storage unit in Uncasville, CT. Despite DSS's having a photocopy of his driver's license from 2009 & 2010 by which they could have identified him while he asked SSA in Shaw's Cove, New London to furnish him a new SSA card (which came to Mr. McAllister's

apartment the day he was found dead), DSS with wanton negligence refused Jay treatment and R's which led to his self medicating excessively with alcohol for acute pain relief.

At the beginning of 2009, Jay began experiencing sharp pains in his lower back that were unrelated to his 2000 injuries. He had had no health insurance since his Medicaid coverage lapsed when he began working for Flat's tattoos in late 2000. He did not have health insurance at work, and he earned too much to continue in Title XIX. He also had not see a dentist or ophthalmologist for many years. Claimant loaned his M/C to Jay in 2006 so that he could see Neil Pastel, Norwich ophthalmologist when he complained that he could not see well enough while simultaneously wearing his eyeglasses and contact lenses to tattoo his customers. Dr. Pastel prescribed Jay received a new pair of eye glasses and he ceased wearing his contacts.

In December 2008 as a result of his being involved in a child custody/support battle with the mother of his 2nd child, over a son now 8 years old who is living with his mother, Jay worked with Complainant as his attorney and completed a Financial Affidavit for the Family Court hearing. Jay's self employment income from the tattoo business which Claimant owned had slipped substantially. The DSS caseworker advised Jay that he again qualified financially, because of having two children, for the full panoply of benefits for low income people. Claimant again filled out the 18 page application for Jay's signature and at the beginning of 2009 Jay began receiving SAGA, food stamps, and Medicaid. Thus, when Jay experienced the above mentioned lower back pains, he was admitted into Community Health Care [i.e. DSS Title19] and started being seen by Dr. Campos which continued until Jay's imprisonment on 6/10/10.

While being seen by Dr. Campos in March 2009, Jay's metal bed frame collapsed While he was asleep. He fell hard onto the metal frame which was on the bedroom floor. He suffered another brain concussion. He had suffered brain concussions in 1994 and 1995, respectively, when his nose was broken several times in fights and when he was beaten in the head by Montville Constable John Salmon. Dr. Peter N. Rosenberg, a Norwich ENT specialist, repaired his broken nose and inner/middle ear damages then. Thus, Jay had suffered multiple brain concussions before he was imprisoned, plus another one summer 2010 when he was attacked by his cellmate, knocked unconscious and hospitalized at the UConn Health Center for multiple stitches in his scalp. Jay therefore had a history of head injuries of which both DOC and DSS were aware, because Corrigan/Radgowski received Jay's DSS files soon after his incarceration. They received Jay's other above mentioned medical records from Complainant via mail, hand delivery, and fax. Complainant also spoke with Warden Erfe and Jay's counselors re above.

While being treated by his PCP in March 2009 for brain concussion, Jay complained to him of a pain in his lower side. His doctors ordered a cat scan of his lower spine and hip thinking the pain was from his 2000 hip and/or pelvis injuries Jay had already been scheduled for a complete right hip replacement for May 2009. Instead, shockingly, a shadow on his left kidney was spotted which turned out, upon further MRI's and cat scans to be a cancerous lesion on his left kidney. Jay had half of his cancerous kidney removed in July 2009. His right hip was completely replaced on Labor Day, 2009. Jay remained hospitalized at Backus for several days after each operation, returning to his 2nd floor condo to live alone with help from Claimant and his friends for shopping and driving to and from work each time.

DSS paid for both operations and all Jay's medical care pre- and post op. Jay received his opiate pain medications, sleeping pills, and anti-psychotic drugs from Stop & Shop and Wal-Mart pharmacies, prescribed by Dr. Campos and Backus ER physicians. Therefore, DSS had compiled a very thick dossier on Jay by the time he was driven to Uncas on Thames a few days after his release from prison by Ms. Carey, at which time he sought both to see Dr. Campos and

have his prescriptions immediately refilled due to agonizing pain. His difficulty in walking even two blocks to an ATM was noted by his attorney, Frank J. Liberty. Because of DMV's snafu, i.e. failure to renew Jay's driver's license while he was in prison despite Claimant's furnishing them with Jay's expired license and offer to pay whatever fees/fines were due, Jay had to walk several times from Bud McAllister's apartment on New London's South Side over the Gold Star Bridge to Groton, Route 12, to the tattoo shop where he worked part-time. Attorney Liberty related this took several hours and caused Jay agonizing pain for which he obviously required an opiate painkiller. Yet DOC did not give him any of his pre-incarceration, lawfully prescribed medications upon release, and DSS refused to see him about November 5th when he went to it.

Claimant therefore contends that DSS Malevolently denied Jay his much needed medical treatments, especially the resumption of his prescription opiate pain killers, sleeping pills, and anti-psychotic medications for which his PCP, Dr. Campos, had just written refills earlier in the day on which Jay was arrested for burglary and immediately imprisoned for having violated the terms of his appeal bond (from 2008 convictions). DOC also violated Jay's 8th Amendment rights, made applicable to the State of Connecticut by the 14th Amendment, by withholding against strong medical advice by Jay's PCP and his oncologist those very same prescriptions which he needed for pain relief and to function normally.

Jay's eyeglasses were broken the morning of June 11, 2010, when he was arrested and jailed, then moved to Norwich Superior Court for an ex parte hearing, and thence to Corrigan CCI. DOC took over 7 months, without any explanation, to have Jay seen by a state paid optometrist who after examining Jay's eyes found that Jay suffered from glaucoma. Jay was eventually furnished a pair of single lens eyeglasses in a shoddy black plastic frame that broke but was not replaced before he was released.. They were broken, held together by duct tape, at Jay's release. During the 15 days he lived thereafter, Jay (1) purchased frames to hold his prison furnished lenses, (2) was prescribed stronger lenses which arrived after his death, and (3) was told that his glaucoma was so severe that he should see an ophthalmologist immediately. Jay complained to friends in person and via cell phone that he had severe pressure and blurry vision in both eyes. He feared that he could no longer work as a tattoo artist in his current condition, and was paranoid about going blind. DSS could have treated this glaucoma as well as re-prescribe his much needed pain and anti-psychotic medications if they had given him a new SAGA/Medicaid ID card allowing him to see Dr. Campos and Dr. Neil Pastel, our family's Norwich ophthalmologist who had treated Jay all his life. Jay therefore was compelled to use alcohol to self medicate for the excruciating pain he was enduring in both his hip/pelvis and in his eyes. DOC and DSS are guilty of gross medical malpractice for not treating his post operative pain and glaucoma. This went beyond far beyond negligence because Claimant continually, for Jay's 18 month period of imprisonment, called the attention of both wardens at Corrigan & Radgowski CCI's and Warden Chapdelaine at Osborn CCI that Jay was in great medical pain.

The only medication provided Jay by DOC was one 30 pill jar of Motrin per month. When Jay complained that the dosage and strength were insufficient for his pain, both guards and nurses laughingly, sarcastically told him that if the 30 Motrin pills per month were insufficient, then he should use his commissary funds that Complainant was providing to buy additional jars of Motrin at the commissary. Jay did so, but the nurses kept them, sometimes giving him have 3 per day, but often he received less than that number due to shift changes, lockdowns, and plain forgetfulness. Jay did receive RX eye drops in prison for his glaucoma, but was given none upon his release. Because DSS refused to re-admit him to Medicaid without a SSA card, he had no RX eye drops for his glaucoma the last 15 days of his life.

Dr. Campos saw Jay on June 9, 2010, and told Jay he was an alcoholic and should get treatment. Nevertheless Dr. Campos wrote new prescriptions for newer, stronger opiate pain killers and an anti psychotic medication. He also wrote an order to Medicaid system for Jay to have a colonoscopy at Windham Hospital, Willimantic, CT, because it was the only area hospital still providing same for Title XIX patients on 6-29-10. Jay had been having loose bloody bowel movements, up to 6 or 7 daily, for many months. Dr H. Wayne Carver's autopsy of Jay confirmed that these were caused by diverticulitis and ulcerative colitis, neither of which conditions was treated by DOC while Jay was incarcerated. Dr. Lattanzi, Jay's oncologist, saw Jay before and after his kidney surgery. He saw Jay once at Corrigan CCI and advised DOC that the cancer had not metastasized, but that he wanted to see Jay again. He was denied permission for additional prison visits to examine Jay. Dr. Goulding was an ER physician on the staff of Backus Hospital in Norwich. He saw Jay on June 9th prior to Dr. Campos. Dr. Goulding diagnosed Jay as an alcoholic, provided him on Backus Hospital stationery a list of all alcohol and drug rehabilitation facilities in CT, and told Jay to admit himself to one as soon as possible.

All these doctors informed Claimant that Jay did not have heart and/or coronary artery disease prior to incarceration. Dr. Carver's autopsy found that Jay had advanced heart disease, blocked coronary arteries and plaque build-up in many of his other major blood vessels. This was not diagnosed by DOC despite Jay's frequent complaints of dizziness and fainting spells while incarcerated. This is further evidence of medical malpractice by DOC medics. Or, in the alternative, it was malpractice by Jay's DSS doctors from January 2009 through his incarceration on 6-10-10.

Prison officials are obligated under the Eighth Amendment to provide prisoners with adequate Medical care.¹ This principle applies regardless of whether the medical care is provided by governmental employees or by private medical staff under contract with the government.² In order to prevail on a constitutional claim of inadequate medical care, prisoners must show that prison officials treated them with "deliberate indifference to serious medical needs."³ What is deliberate indifference? A prison official demonstrates "deliberate indifference" if he or she recklessly disregards a substantial risk of harm to the prisoner.⁴ This is a higher standard than negligence, and requires that the official knows of and disregards an excessive risk of harm to the prisoner by failing to take reasonable steps to abate that risk.⁵ Prison officials' knowledge of a substantial risk to a prisoner's health can be proven by circumstantial evidence. For example, it may be inferred from "the very fact that the risk was obvious."⁶ This circumstantial proof may be shown by deterioration in prisoners' health, such as obvious conditions like sharp weight loss. A prison official cannot "escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist."⁷

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Estelle v. Gamble, 429 U.S. 97, 103 (1976); *Brown v. Plata*, 131 S.Ct. 1910, 1928 (2011) ("Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment... A prison that deprives prisoners basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.").

² *West v. Atkins*, 487 U.S. 42, 56-57(1988); see also *Richardson v. McKnight*, 521 U.S. 399 (1997). ³ *Estelle*, 429 U.S. at 104. ⁴ *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). ⁵ *Id.* at 837, 847. ⁶ *Farmer*, 511 U.S. at 842. ⁷ *Id.* at 843 n.8.