

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

ELIZAH SHEPPARD,

Plaintiff/Petitioner,

v

File No. 2015030910AW
HON. PHILIP E. RODGERS, JR.

MICHIGAN DEPARTMENT OF CORRECTIONS
and LISA WILLINGHAM,

Defendants/Respondents.

Plaintiff/Petitioner Acting in Pro Per

H. Steven Langschwager (P52380)
Attorney for Defendants/Respondents

pc: Richard W. Boone #409976

DECISION AND ORDER REGARDING
COMPLAINT FOR MANDAMUS AND MOTION TO INTERVENE

The Plaintiff/Petitioner (hereinafter the “Petitioner”) is a prisoner incarcerated at Pugsley Correctional Facility in Grand Traverse County, Michigan. The Petitioner filed a Health Care Request to review his medical records on January 3, 2015, on January 18, 2015, on January 20, 2015, and on February 6, 2015. Subsequently, Defendant/Respondent Willingham (hereinafter the “Respondent”) completed a Response to Request for Health Record Information (“Response”) indicating that the Petitioner’s requests could not be processed because he had failed to pursue said

requests in conformance with the Michigan Department of Corrections (MDOC) procedure.¹ On March 6, 2015, the Petitioner filed a Complaint for Mandamus to Comply with the Medical Records Access Act.

To obtain a writ of mandamus, a petitioner must show that: (1) he or she has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature, and (4) petitioner has no other adequate legal or equitable remedy.² The burden of showing entitlement to the extraordinary remedy of a writ of mandamus is on the petitioner.³

The Medical Records Access Act, MCL § 333.26261 *et seq.*, states in part that:

An individual...who wishes to examine or obtain a copy of the patient's medical record shall submit a written request that is signed and dated by that individual not more than 60 days before being submitted to the health care provider or health facility that maintains the record that is the subject of the request. Upon receipt of a request under this subsection, a healthcare provider or health facility shall, as promptly as required under the circumstances, but not later than 30 days after receipt of the request or if the medical record is not maintained or accessible on-site not later than 60 days after receipt of the request...make the medical record available for inspection or copying, or both, at the health care provider's or health facility's business location during regular business hours or provide a copy of all or part of the medical record, as requested by the patient or his or her authorized representative.

The Medical Records Access Act also indicates that a health care provider, health facility, or medical records company to which a request is directed may charge the patient a fee for a copy of all or part of the patient's medical record.⁴

After review, it appears that the MDOC's policy for examining and/or obtaining health record information complies with the Medical Records Access Act. However, inmate Health Care Requests may not be processed if they are procedurally deficient.

While the Petitioner is entitled to examine and/or obtain a copy of his medical records, he

¹ Specifically, the Response stated, "Review of health records is not permitted. You may obtain copies of your health record by following the steps above in 'A'." The steps listed in Section A include: (1) complete the attached authorization form, stating specifically what information you are requesting. (2) Forward a completed disbursement voucher in the amount of \$__ (__ pages x \$.25 per page). (3) Submit a check or money order for the amount of \$__ (__ pages) An initial fee of \$20.00 per request for a copy of the record. One dollar (\$1.00) per page for the first 20 pages. Fifty cents (\$.50) per page for pages 21 through 50. Twenty cents (\$.20) per page for pages 51 and over. Make check or money order payable to STATE OF MICHIGAN. Send payment to: __, Attn: Medical Records.

² *White-Bey v Dep't of Corrections*, 239 Mich App 221; 608 NW2d 833 (1999).

³ *Id.*

⁴ MCL § 333.26269.

cannot circumvent MDOC's procedure since the procedure conforms with current law.⁵ Pursuant to MCL § 333.26269, a health facility is entitled to charge certain fees to provide copies of a patient's medical record, therefore, the Petitioner must pay the associated amount if he wishes to obtain copies of his records. An individual seeking mandamus must not have another adequate remedy available.⁶ Here the Petitioner is not entitled to the extraordinary remedy of a writ of mandamus because he can obtain a copy of his medical records by properly following the MDOC procedure.

Richard W. Boone, who is also an inmate at Pugsley Correctional Facility, filed a Motion to Intervene Pursuant to MCR 2.209 or in the Alternative Permissive Joinder Pursuant to MCR 2.206, on April 28, 2015, claiming he is requesting the same relief as Plaintiff for the same reasons. Similarly, Petitioner Boone is not entitled to the extraordinary remedy of a writ of mandamus because he can obtain a copy of his medical records by properly following the MDOC procedure.⁷

For the reasons stated herein, the Petitioner's Complaint for Mandamus is denied, the Motion to Intervene is denied and the case is dismissed.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

⁵ Further, the Defendants' Motions for Summary Disposition, filed May 15, 2015, claim they are entitled to summary disposition because the Petitioner has failed to comply with Michigan's Prison Litigation Reform Act.

⁶ *Cyrus v Calhoun Co. Sheriff*, 85 Mich App 397, 399; 271 NW2d 249 (1978).

⁷ In addition to payment, the MDOC requires that a petitioner submitting a Health Care Request provide specific, written dates for the records they wish copied.