NO. 4-10-0324 Filed 1/18/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

HENRY SCATES, Plaintiff-Appellant, v. ROGER E. WALKER, JR., Director, the Illinois Department of Corrections; DERWIN LEE RYKER; and C. BOYD, Assistant Warden, Defendants-Appellees.	)))))))	Appeal from Circuit Court of Sangamon County No. 08L329 Honorable Peter C. Cavanagh, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

Held: Where plaintiff fails to sufficiently plead he has exhausted his administrative remedies, the trial court did not err in granting defendants' motion to dismiss plaintiff's complaint.

In December 2008, plaintiff, Henry Scates, an inmate in the Illinois Department of Corrections (Department), filed a complaint for damages alleging defendants, Roger E. Walker, Jr., Derwin Lee Ryker, and C. Boyd, violated his constitutional rights. In February 2010, defendants filed a motion to dismiss the complaint, which the trial court granted.

On appeal, plaintiff argues the trial court erred in granting defendants' motion to dismiss. We affirm.

I. BACKGROUND

In December 2008, plaintiff filed a *pro se* complaint for damages, alleging a violation of his constitutional rights

and those established by the supreme court's decision in *Hadley v. The Illinois Department of Corrections*, 224 Ill. 2d 365, 864 N.E.2d 162 (2007). In that case, the court invalidated the Department's 2005 regulations as to the obligation of prisoners claiming to be indigent to pay a $2 co-payment for their nonemergency medical and dental services. *Hadley*, 224 Ill. 2d at 385, 864 N.E.2d at 173.

Plaintiff claimed he had been in prison since 1992 and had been indigent since that time. Plaintiff attached to his complaint verified copies of his prison trust-account statements. An October 2008 certificate of institutional funds showed plaintiff had a negative balance of $11.38.

Plaintiff alleged he went to see a nurse in August 2008 to receive medical treatment for a severe chest and head cold and to receive a test for the human immunodeficiency virus (HIV). Although he told the nurse he was indigent, plaintiff claimed he was deprived of his right to adequate medical treatment. Plaintiff stated he did receive the HIV test.

Plaintiff alleged he filed a grievance with the warden regarding the illegal act of charging the $2 medical co-payment. The grievance alleged the business office at Lawrence Correctional Center had improperly deducted co-pay charges from plaintiff's account since 2005. Further, he alleged a nurse denied him medical services until he agreed to sign a co-pay deduction

form.

A counselor responded to the grievance in August 2008 and found all Department guidelines had been followed. The grievance officer's report of October 2008 stated, in part, as follows:

> "The nurse does not determine whether or not an inmate is indigent. The nurse has the inmate complete the voucher and then the computer system determines whether or not the inmate is liable for the co-pay. The computer program is designed to determine whether or not the inmate is considered to be indigent and exempt from the co-pay."

The grievance officer recommended the grievance be denied as the staff does not determine indigent status regarding medical co-pay. The warden concurred with the recommendation in November 2008.

In his complaint, plaintiff sought money damages against defendants for violations of due process, equal protection, and the eighth amendment relating to their failure to comply with the supreme court's decision in *Hadley*.

In February 2010, defendants filed a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2008)). Defendants argued the complaint

should be dismissed because plaintiff failed to (1) state a cause of action against the named defendants, (2) state a claim for deliberate indifference to a serious medical need, and (3) exhaust his administrative remedies. Defendants attached to the motion an affidavit from Jackie Miller, a chairperson with the Department's Office of Inmate Issues, who searched the records of the administrative review board and found no grievance from plaintiff pertaining to co-pays for medical services at Lawrence Correctional Center. Miller stated plaintiff did not exhaust his administrative remedies.

In March 2010, the trial court granted defendants' motion to dismiss. This appeal followed.

II. ANALYSIS

Plaintiff argues the trial court erred in granting defendants' motion to dismiss. We disagree.

A. Standard of Review

A motion under section 2-619.1 allows a party to "combine a section 2-615 motion to dismiss based upon a plaintiff's substantially insufficient pleadings with a section 2-619 motion to dismiss based upon certain defects or defenses." *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164, 788 N.E.2d 740, 747 (2003). On appeal, the trial court's dismissal of a complaint under section 2-619.1 is reviewed *de novo*. *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill.

App. 3d 399, 402, 911 N.E.2d 1049, 1052 (2009).

B. Exhaustion of Administrative Remedies

Defendants argue plaintiff failed to exhaust his administrative remedies. We agree.

> "The doctrine of exhaustion of administrative remedies holds that a party aggrieved by an administrative decision cannot seek judicial review without first pursuing all available administrative remedies. [Citations.] The reasons for the exhaustion requirement are to allow the administrative agency to fully develop and consider the facts of the case before it, to allow the agency to utilize its expertise, and to allow the aggrieved party to obtain relief from the agency, thus making judicial review unnecessary." *Canel v. Topinka*, 212 Ill. 2d 311, 320-21, 818 N.E.2d 311, 319 (2004).

The exhaustion doctrine applies to grievances filed by inmates and includes "those grievances alleging a constitutional violation." *Johnson v. Department of Corrections*, 368 Ill. App. 3d 147, 150, 857 N.E.2d 282, 285 (2006), citing *Beahringer v. Page*, 204 Ill. 2d 363, 376, 789 N.E.2d 1216, 1225 (2003).

In the case *sub judice*, the grievance officer recom-

mended plaintiff's grievance be denied. The warden concurred in that recommendation. The warden's written response included a section where plaintiff could indicate his intention to appeal the decision to the Department Director. That section was left blank. Also, Miller's affidavit indicated she searched plaintiff's grievances before the administrative review board and found none regarding the $2 co-pay for medical services at Lawrence Correctional Center.

Following a written decision by the chief administrative officer, the "administrative process continues with appeals to the Director of Corrections and possibly to an administrative review board." *Beahringer*, 204 Ill. 2d at 377, 789 N.E.2d at 1225, citing 20 Ill. Adm. Code 504.850, as amended by 27 Ill. Reg. 6214, 6288-89 (eff. May 1, 2003). Here, plaintiff did not appeal to the Director. Thus, he has failed to sufficiently plead he exhausted his administrative remedies. Accordingly, the trial court did not err in granting defendants' motion to dismiss.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.