

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

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DALLAS COBBS, #164276,  
File

No. 07-CV-14644

Plaintiff,  
vs. Hon.

Anna Diggs Taylor

GEORGE J. PRAMSTALLER, CRAIG  
HUTCHINSON, WILLIAM BORGERDING,  
MARCELLA CLARK, JAMES DILLON,  
ROLDERT FISCHRÉ, KEITH IVENS,  
GREGORY NAYLOR, BENCY MATHAI,  
BONITA DAVIS NEIGHBORS, WALTER  
ORMES, HARESH PANDYA, CHRIS SAMY,  
individually and in their official capacities, and  
CORRECTIONAL MEDICAL SERVICES,  
INC.,  
Defendants.

Mag. Charles E. Binder

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Paul D. Reingold (P27594)  
MICHIGAN CLINICAL LAW PROGRAM  
Attorney for Plaintiff  
363 Legal Research Building  
801 Monroe Street P.O.  
Ann Arbor, MI 48109-1215  
(734) 763-4319 (517)

Cori E. Barkman (P61470)  
Michigan Department of Attorney General  
Attorney for Defendants  
Corrections Division  
Box 30217  
Lansing, MI 48909  
335-7021

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**FIRST AMENDED COMPLAINT**

Plaintiff Dallas Cobbs, for his first amended complaint, states as follows:

**Introduction**

1. This is a civil rights action under 42 U.S.C. § 1983 challenging the defendants' denial of medical care to the prisoner-plaintiff Dallas Cobbs.
2. In 2004 Mr. Cobbs had cataracts in both eyes and was scheduled for surgery.
3. An ophthalmologist successfully removed the cataract from Mr. Cobbs' right eye and told Mr. Cobbs that the second surgery would be in six weeks, when he had fully recovered.

4. Shortly before the second operation, the defendants cancelled his surgery.

5. Despite steady requests for the second surgery by Mr. Cobbs' treating physicians, and despite the fact that he became functionally blinded by the thick cataract in his left eye, the defendants denied him the second surgery from October 26, 2004, until mid-April 2008.

6. The defendants did not authorize the second surgery until after Mr. Cobbs had filed this lawsuit and retained counsel.

7. Mr. Cobbs seeks declaratory relief that the defendants' apparent policy of treating only one eye violates the Eighth Amendment; he seeks injunctive relief to ensure that his vision is fully restored; and he seeks nominal, compensatory, and punitive damages for having to wait 1,624 days for the second cataract surgery.

#### **Jurisdiction**

8. This Court has original jurisdiction over the case under 42 U.S.C. § 1331(a) and 1343, as the plaintiff alleges violations of his federal constitutional rights.

#### **Parties**

9. At all relevant times, plaintiff Dallas Cobbs was incarcerated at Ryan Correctional Facility, 1700 Ryan Road, Detroit, MI 48212. He remains a prisoner there today.

10. At all relevant times, defendant George J. Pramstaller was the chief medical officer of the Michigan Department of Correction's (MDOC) Bureau of Health Care Services (BHCS), and a member of the Medical Services Advisory Committee (MSAC). He is sued in his individual and official capacity.

11. At all relevant times, defendant Craig Hutchinson was the state medical director for Correctional Medical Services, Inc. (CMS), and a member of the Medical Services Advisory Committee. He is sued in his individual and official capacity.

12. At all relevant times, Correctional Medical Services, Inc., was a Missouri corporation doing business in Michigan as the MDOC's contract medical provider.

13. CMS's utilization review unit approves or denies requests for specialty care, and in this case repeatedly denied Mr. Cobbs' physicians' requests for surgical specialty care.

14. Upon information and belief, the Medical Services Advisory Committee comprises senior medical personnel from both the MDOC/BHCS and CMS.

15. Upon information and belief, the MSAC serves two functions: (a) it sets and/or applies and implements prison health care policy; and (b) it makes decisions about the specific care to be provided to individual patients in Michigan's prisons.

16. Defendants William Borgerding, Marcella Clark, James Dillon, Roldert Fischré, Keith Ivens, Gregory Naylor, Bonita Davis Neighbors, Bency Mathai, Walter Ormes, Haresh Pandya, and Chris Samy were members of the MSAC when the committee denied Mr. Cobbs' physicians' requests for a second cataract surgery. These defendants are sued in their individual and official capacities.

17. At all relevant times all the defendants acted under color of state law.

### **Facts**

18. In 2004 Mr. Cobbs was diagnosed with cataracts in both eyes.

19. On July 27, 2004, Mr. Cobbs was taken to the Duane L. Waters Hospital at the Jackson prison complex for a consultation with ophthalmologist Dr. Ghulam Dastgir for pre-approval for scans of the right and left eye, prefatory to possible cataract extraction with lens implants in both eyes. The right eye was to be done first.

20. On August 23, 2004, Mr. Cobbs was taken to Parkside Eye Clinic for the scans; he signed a consent form for surgical cataract extraction with lens implants, for both eyes.

21. On August 30, 2004, Mr. Cobbs was taken to Blake Woods Surgery Center for cataract extraction and lens implant of his right eye. Mr. Cobbs then went to Duane L. Waters Hospital for recovery.

22. Dr. Dastgir's treatment plan was to have him brought back to the Blake Woods Surgery Center in six weeks for cataract surgery of his left eye as previously scheduled.

23. On October 7, 2004, Ryan physician Dr. Piper made a request for ophthalmology specialty care noting that Mr. Cobbs was to have the second cataract procedure done on his left eye, citing the dictation of the ophthalmologist, Dr. Dastgir.

24. The MSAC denied Dr. Piper's request on October 26, 2004. At that time the MSAC members who made the decision included William Borgerding, Marcella Clark, Roldert Fischré, Craig Hutchinson, Gregory Naylor, Bonita Davis Neighbors, and George Pramstaller.

25. On November 29, 2004, Mr. Cobbs sent a health services request form asking why he had not received the cataract surgery for his left eye.

26. On or about December 1, 2004, health services issued a response stating that "per MSP [medical service provider] surgery not approved by CMS."

27. On December 8, 2004, Mr. Cobbs filed a grievance against health services to find out why the surgery had been denied and to try to get it rescheduled.

28. On February 4, 2005, his grievance was denied at Step I. The denial relied on the MSAC's October 26, 2004, decision not to authorize the cataract surgery on Mr. Cobbs' left eye.

29. On January 19, 2005, Mr. Cobbs appealed the grievance to Step II, stating that he had been told in the summer of 2004 that he would have the cataract surgery on his left eye.

30. A Step II response dated February 4, 2005, was sent stating that cataract surgery for his left eye had never been approved and that he should direct all further concerns to health

services for a medical service provider to determine if another surgery request would be filed.

31. On or about February 7, 2005, Mr. Cobbs appealed the Step II grievance denial to Step III.

32. On March 17, 2005, his Step III appeal was denied. The denial stated that he had already received his requested relief, explaining that the cataract surgery for his left eye had been approved initially but that the MSAC later rescinded that approval on review.

33. Mr. Cobbs sent a health care request form to health services on March 17, 2005, to see an optometrist for new glasses because his vision had changed due to the cataract on his left eye, and he was having trouble seeing.

34. Mr. Cobbs was seen by an optometrist, Dr. McGraf, on May 10, 2005, but was told by the doctor that he could not get new glasses until he had cataract surgery

35. On May 18, 2005, Dr. McGraf submitted another request for cataract evaluation by an ophthalmologist and possible surgery.

36. On May 31, 2005, that request was denied by CMS in reliance on the October 26, 2004, MSAC decision denying Mr. Cobbs' physicians' request for surgery on his left eye.

37. On June 8, 2005, Mr. Cobbs sent a health care request form to health services concerning the vision problems the cataract was causing him. No appointment was scheduled.

38. On June 24, 2005, Mr. Cobbs filed a second Step 1 grievance about his vision problems and the cataract surgery.

39. A response dated July 13, 2005, said that the surgery was not approved and that Mr. Cobbs was to be evaluated in 6-12 months by the optometrist.

40. On November 2, 2005, Mr. Cobbs sent another health care request form to health services noting that his vision was deteriorating and asking when he would see the optometrist.

41. A reply dated November 3, 2005, stated that he was on the appointment list.

42. On or about December 14, 2005, Dr. McGraf made another request for the surgery stating “Cataract surgery needed. No view of retina of left eye possible. Patient has also walked into object on left side.”

43. In a response dated December 27, 2005, CMS denied the request relying on the MSAC’s 2004 denial of Mr. Cobbs’ physicians’ request for surgery.

44. On January 11, 2006, Dr. McGraf responded to the denial stating that a follow-up visit was needed and citing glaucoma as a risk.

45. On or about February 1, 2006, Mr. Cobbs was again examined by Dr. McGraf, who again requested approval of cataract surgery, citing glaucoma as a risk.

46. CMS denied the request on or about March 15, 2006.

47. On March 15, 2006, Dr. McGraf made another surgery request to CMS to prevent secondary glaucoma.

48. CMS denied that request on April 3, 2006, again citing the MSAC’s 2004 denial of Mr. Cobbs’ physicians’ request for surgery.

49. On or about April 17, 2006, Dr. McGraf appealed the denial to the MSAC stating that Mr. Cobbs “need[s] cataract surgery” and reiterating the risk of secondary glaucoma.

50. On April 25, 2006, the MSAC, consisting of Marcella Clark, James Dillon, Keight Ivens, Craig Hutchinson, Bency Mathai, Walter Ormes, Haresh Pandya, George Pramstaller, and Chris Samy denied the appeal for cataract surgery.

51. On May 9, 2006, CMS re-affirmed its denial of the March 15 request for surgery, relying on the MSAC’s April 25, 2006, meeting upholding non-approval of the cataract surgery.

52. On May 27, 2006, Mr. Cobbs sent a health care request form to health services to

be examined by a doctor because he could no longer see out of his left eye.

53. An answer dated May 30, 2006, instructed him to “watch the call out” for the eye clinic. Mr. Cobbs was not scheduled for a “call out” visit with any medical service provider.

54. On June 21, 2006, Mr. Cobbs sent a follow-up health care request form to health services to see a doctor. An appointment was made for July 26, 2006.

55. On July 16, 2006, Mr. Cobbs sent a health care request form to health services stating he had no vision in his left eye and that he needed immediate attention.

56. On July 27, 2006, after examining Mr. Cobbs, Dr. Piper requested a referral to ophthalmology noting the deterioration in Mr. Cobbs’ vision.

57. On August 8, 2006, Dr. Piper again requested that Mr. Cobbs see an ophthalmologist because Mr. Cobbs’ vision had significantly deteriorated.

58. On August 25, 2006, Dr. Cook examined Mr. Cobbs, requested surgery, and also stated that Mr. Cobbs needed to wear a patch on his left eye in order to function.

59. On September 28, 2006, Dr. Piper’s August 8 referral of Mr. Cobbs to an ophthalmologist was deemed “auto-deny” by CMS, relying on an “MSAC memorandum.”

60. Mr. Cobbs sent a health care request form to health services on October 26, 2006, complaining of strain and blurred vision in his good eye, plus headaches, dizziness, and loss of balance.

61. The response dated November 2, 2006, was stamped “optometry list.”

62. On October 29, 2006, Mr. Cobbs filed a third Stage I grievance complaining that the optometrists kept making surgery requests for his left eye and that CMS continued to deny surgery, relying on the April 25, 2006, MSAC decision not to authorize the surgery.

63. When Mr. Cobbs did not receive a response to his Step I grievance, he filed a

Step II grievance appeal on November 30, 2006, repeating the Step I claim.

64. Five months later, in a response dated April 27, 2007, Mr. Cobbs' Step II appeal was denied. The denial stated that "the CMO [chief medical officer George Pramstaller] upheld non-approval by the MSAC."

65. On December 13, 2006, Dr. McGraf requested that Mr. Cobbs be evaluated and that cataract surgery be ordered.

66. CMS denied that request on or about March 6, 2007.

67. On or about January 15, 2007 Mr. Cobbs filed a Step III appeal re-stating the claims contained in Step I and Step II of his grievance.

68. On December 13, 2006, Dr. McGraf requested that Mr. Cobbs be evaluated and that cataract surgery be ordered.

69. On February 27, 2007, Mr. Cobbs wrote the MDOC director's office to try to expedite a response to his Step III grievance appeal.

70. That director's office answered by a letter dated April 3, 2007, stating that the grievance appeal would be returned as soon as it was feasible.

71. Mr. Cobbs sent a health care request form to health services on April 21, 2007, complaining of double vision in his good right eye.

72. An answer dated April 26, 2007, was returned stamped "optometry list."

73. Mr. Cobbs wrote a letter dated May 21, 2007, to the MDOC director's office complaining that *per* MDOC policy, the total process from filing a Step I grievance to providing a Step III response was supposed to be 90 days absent an extension, which had not been granted.

74. On July 29, 2007, Mr. Cobbs wrote the MDOC's grievance and appeals section, again citing MDOC policy and requesting a response to his grievance.



75. On September 28, 2007, Mr. Cobbs sent a health care request form to health services complaining of headaches, dizziness, and blurred vision. He was given an appointment for October 5, 2007, to see a nurse.

76. On October 5, 2007, Mr. Cobbs saw Ms. Butts, R.N. She told Mr. Cobbs that his medical record indicated that a request for an off-sight visit to ophthalmology was made by Dr. McGraf in March 2007 but was not authorized. She further said that there was nothing she could do about Mr. Cobbs' eye strain.

77. The nurse scheduled Mr. Cobbs to see the doctor on October 29, 2007, but Mr. Cobbs was never called for an appointment on that day.

78. On October 29, 2007, Mr. Cobbs sent in another form for a medical appointment, which was scheduled for November 6, 2007.

79. On November 7, 2007, Mr. Cobbs sent a health care request form stating that he had not been seen on November 6, 2007, and requesting medical attention.

80. Mr. Cobbs filed this action *in pro per* on or about October 31, 2007. The lawsuit was served on Dr. Pramstaller on or about November 16, 2007; his waiver of service was filed with the clerk of the court on December 6, 2007.

81. Instead of trying to get approval for the surgery, Dr. Pramstaller moved to dismiss the lawsuit, claiming that he had had no connection with the denial of the repeated requests for surgery. *See* Docket No. 12. That motion was later withdrawn. *See* Docket No. 26.

82. No steps were taken to approve the surgery until after the defendants and/or their counsel learned that Mr. Cobbs would be represented in his lawsuit, in the spring of 2008.

83. The defendants repeatedly refused to approve the second surgery despite actual knowledge that Mr. Cobbs faced an increased risk of glaucoma without the surgery and that he

was effectively blind in one eye and wore a patch from 2006 to 2008.

84. The defendants failed to provide treatment, or failed to authorize treatment, despite their knowledge of a substantial risk of serious harm. Their total failure of care constituted deliberate indifference to Mr. Cobbs' serious medical needs.

85. The defendants' failure to provide or authorize treatment was the proximate cause of physical injury to Mr. Cobbs, in the form of cataract-induced blindness in one eye, headaches, vision problems, and eye strain.

86. The plaintiff exhausted his administrative remedies by timely appealing three separate grievances to Step III.

### **Claims**

87. The defendants failure to approve or to provide Mr. Cobbs with cataract surgery, and to follow the prescribed treatment plan of the consulting optometrists and ophthalmologists, constituted deliberate indifference to Mr. Cobbs' serious medical needs, in violation of the Eighth Amendment to the U.S. Constitution, enforceable under 42 U.S.C. § 1983.

88. The failure of all the defendants, individually and in concert, to approve and provide the cataract surgery constituted deliberated indifference to the plaintiff's serious medical needs and subjected him to the wanton and unnecessary infliction of pain and suffering, in violation of the Eighth Amendment to the U.S. Constitution, enforceable under 42 U.S.C. § 1983.

### **Damages**

89. As a proximate result of the defendants acts and omissions, Mr. Cobbs suffered damages including but not limited to: a thick, dense cataract on his left eye that effectively blinded him in that eye and forced him to wear an eye-patch; headaches; vision problems; eye strain; inability to work his previous job as a locksmith; an increased risk of glaucoma and an

increased risk of complications from surgery when the cataract was finally removed; long-term loss of the use of his left eye; walking into walls and other people for lack of left-side and peripheral vision; loss of depth perception; anxiety; pain and suffering; humiliation and mental and emotional distress.

**Relief Requested**

WHEREFORE, the plaintiff requests that this Court:

- (a) Enter a declaratory judgment that the defendants' denial of medical care constituted deliberate indifference to Mr. Cobbs' serious medical needs in violation of the Eighth Amendment to the U.S. Constitution;
- (b) Enter an injunction ordering the defendants to provide all needed follow-up ophthalmological care to ensure that Mr. Cobbs' vision is fully restored;
- (c) Enter judgment against the defendants awarding Mr. Cobbs nominal, compensatory, and punitive damages following trial;
- (d) Enter judgment against the defendants awarding Mr. Cobbs interest, costs, and actual attorneys' fees as permitted by law (including 42 U.S.C. § 1988); and
- (e) Grant such other relief as the Court deems appropriate.

**Jury Demand**

The plaintiff requests a trial by jury of all issues so triable.

Respectfully submitted,

MICHIGAN CLINICAL LAW PROGRAM

s/ Paul D. Reingold  
Attorney for Plaintiff  
363 Legal Research Building  
801 Monroe Street  
Ann Arbor, MI 48109-1215  
(734) 763-4319  
**pdr@umich.edu -- (P-27594)**

Annica Sunner and Brian Cathey  
Student Attorneys on the Complaint

Dated: June 9, 2008