

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WISCONSIN

Melvin Leon Kellam v. Jamie Barker, Virginia Trzebiatowski, and
Jered Kuehn

Kellam · No. 24-cv-454-jdp · Decided May 11, 2026

SUMMARY

The court reconsidered its prior ruling concerning exhaustion of administrative remedies under the Prison Litigation Reform Act. It held that the plaintiff’s 2024 grievance could not retroactively exhaust claims arising from a nurse practitioner’s 2021 conduct, granted reconsideration, and dismissed those claims without prejudice.

CASE DETAILS

COURT	United States District Court for the Western District of Wisconsin
WRITING FOR THE COURT	James D. Peterson
JURISDICTION	United States District Court for the Western District of Wisconsin
DECIDED	May 11, 2026
DOCKET	24-cv-454-jdp
DISPOSITION	other
PROCEDURAL POSTURE	On reconsideration of a prior order denying defendant Virginia Trzebiatowski's motion for summary judgment for failure to exhaust administrative remedies under the Prison Litigation Reform Act, the district court granted reconsideration and dismissed Kellam's claims against Trzebiatowski without prejudice.
STANDARD OF REVIEW	The court reconsidered its prior exhaustion ruling and reviewed whether Kellam's grievance satisfied the PLRA's administrative-exhaustion requirement for claims based on Trzebiatowski's 2021 conduct.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- motion for reconsideration
- prisoners rights
- civil procedure
- health law
- motions to dismiss

PRACTICE AREAS

prisoner litigation

civil procedure

civil rights

administrative exhaustion

medical-care claims

QUESTIONS PRESENTED

1. Whether the district court should reconsider its prior conclusion that Kellam's April 2024 grievance exhausted his claims against Trzebiatowski.
2. Whether the continuing violations doctrine permits a later grievance concerning an ongoing medical-care issue to retroactively exhaust claims based on an earlier, discrete interaction with a medical provider.
3. Whether dismissal for failure to exhaust administrative remedies should be without prejudice.

HOLDINGS

1. A grievance exhausts an ongoing course of events when the prisoner becomes aware of the ongoing issue and promptly files the grievance, but it cannot retroactively exhaust a stale claim based on earlier conduct that the prisoner knew or should have known about and could have grieved earlier.
2. Kellam's April 2024 grievance did not exhaust his claims against Trzebiatowski because those claims arose from her 2021 telehealth interaction and the grievance was an impermissible attempt to resurrect an old claim by combining it with a newer grievance concerning other defendants.
3. Dismissal for failure to exhaust administrative remedies is without prejudice.

KEY QUOTATIONS

“The general rule from Turley, Compton, and Nieto is this: if a plaintiff becomes aware of an ongoing issue and promptly files a grievance, then the grievance exhausts administrative remedies for the entire ongoing course of events, both before and after the date of the grievance. But if a plaintiff was already aware of an issue and could have grieved it earlier, then he cannot retroactively exhaust his administrative remedies by shoehorning the earlier issue into a later grievance and asserting that the problem is ongoing.”

“Nothing in Turley allows an inmate to exhaust administrative remedies that way.”

FACTUAL BACKGROUND

Kellam alleged that medical staff denied him custom medical shoes and refused to allow him to see a foot specialist. Trzebiatowski treated Kellam only once, during a telehealth visit in 2021. Kellam filed his only grievance about the medical-shoe issue on April 8, 2024, referring to conduct by health-services nursing staff and Jimmie Barker, but not specifically identifying Trzebiatowski's earlier treatment.

PROCEDURAL HISTORY

Kellam, proceeding without counsel, sued medical staff at Stanley Correctional Institution concerning medical shoes and access to a foot specialist. The court previously denied Trzebiatowski's motion for summary judgment, concluding that Kellam's 2024 grievance exhausted his claims against her under the continuing violations

doctrine. Trzebiatowski moved for reconsideration, Kellam did not respond, and the court granted the motion and dismissed the claims against Trzebiatowski without prejudice.

DISPOSITION

other

CASES CITED

- Turley v. Rednour, 729 F.3d 645 (7th Cir. 2013)
- Compton v. Cox, No. 12-cv-837-jdp, 2017 WL 933152 (W.D. Wis. Mar. 8, 2017)
- Nieto v. Dittman, No. 16-cv-163-jdp, 2017 WL 3610571 (W.D. Wis. Aug. 22, 2017)
- Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004)

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