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Medical Marijuana: A Possible Cost Reducer for Workers' Compensation Carriers?

In December, a New Jersey Workers' Compensation Judge ordered a workers' compensation carrier to pay for medical marijuana after a trial on the issue. This is the first decision of its kind in New Jersey, but most likely not the last. It appears that the Attorney General Jeff Sessions, an appointee President Trump, isn't going to interfere with states and how they administer medical marijuana, although recreational marijuana might be a different story. As such, it appears Judges will be able to continue to order carriers to pay for medical marijuana.

In 2008, an employee sustained an injury to his hand while working for 84 Lumber in Egg Harbor Township. This resulted in complex regional pain syndrome (CRPS). The employee was awarded 33 1/3 percent of partial total for his injuries (apportioned 50 percent of the hand and 12½ percent for the CRPS) in 2012. At that time, the Judge ordered the employer to authorize ongoing treatment with a pain management doctor. The employee was receiving monthly prescriptions of 120 Oxycodone tablets, 800 mg ibuprofen and lidocaine patches.

The employee had burning and swelling in his hand and, on his own, experimented with marijuana as a treatment. The employee told a doctor that he felt the marijuana was helpful in addressing his neuropathic pain.

The employee purchased three ounces starting in March 2014 and later on submitted his invoices to the workers' compensation carrier for reimbursement and it was denied. (Under the statute, an employee can purchase one ounce of marijuana per month with the cost being no higher than \$520 per ounce). The employer's counsel then filed an emergent motion to enforce the terms of the Order Approving Settlement from 2012 that required the carrier to authorize treatment with the first doctor. The main issue at trial was whether medical marijuana was a curative treatment. Judge Ingrid French found in favor of the employee. In her opinion, based on a doctor's testimony, she wrote, "the effects of the marijuana, in many ways, are not as debilitating as the effects of the Percocet" and "the pharmacy records show that, ultimately petitioner was able to reduce his use of oral narcotic medication. As a result of his improved pain management, he has achieved a greater level of functionality."

Although this case is not binding on other Judges in New Jersey, it is certainly foreseeable that the reasoning here will be followed by other Judges in the division. At this time, there is very little data on the drug that substantiates it as an effective treatment, however, as Judge French commented, the use of medical marijuana here lowered the employee's opiate intake and as such it could be a cost reducer for the employer. Employers and insurance carriers may want to investigate this to determine if this could reduce their medical costs.

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