

Another New Jersey Workers' Compensation Judge Orders a Carrier to Reimburse Worker for the Cost of Medical Marijuana

A New Jersey Workers' Compensation Judge (WCJ) has again ordered a carrier to pay for the cost of an injured worker's medical marijuana.

Judge Lionel Simon, Toms River, ordered the carrier pay the cost of the marijuana to treat the injured worker's muscle spasticity. This is only the second time in New Jersey that a Judge of Compensation has ordered a carrier to pay for the cost of marijuana. In 2016, Judge Ingrid French, after a full trial, ruled in favor of the employee and ordered the carrier to reimburse the employee for the cost.

In the present case, there was not a full trial as in the 2016 case, only a hearing on the issue, after which Judge Simon signed an order. Thus, we only have a transcript from the hearing to look to for the Judge's reasoning. The transcript shows that Judge Simon addressed the conflict that exists between state and federal law, as the carrier denied to pay the cost citing the recent Maine Supreme Court decision. In the Maine case, the Court held that a carrier would be in violation of the Controlled Substances Act if it reimbursed the employee for the cost of marijuana. Judge Simon disagreed stating he does not believe that a carrier who reimburses an employee for the cost is in violation of the C.S.A. Judge Simon, like Judge French and others from around the country, weighed heavily the significant issues presented by the opiate-based pain medications the injured worker was being prescribed and reasoned that marijuana is a safer and less addictive alternative.

Judge Simon at the hearing said that he would welcome Appellate Division and/or New Jersey Supreme Court guidance on the issue.

Comment: Neither New Jersey case is binding, as they are Judge level decisions. However, they are indicative of how this issue is being ruled on by Workers' Compensation Judges around the country who are following their states' medical marijuana laws. It has been long awaited for a higher court decision, like the Maine Supreme Court opinion, addressing the conflict presented by these state laws with federal law. Carriers are correct to take note of the Maine decision and consider it as the carrier in this recent New Jersey case did. Being ordered to pay by the Court may provide some level of insulation to a potential federal prosecution.

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