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Employer Must Reimburse Injured Worker for the Cost of His Medical Marijuana in New Jersey

On Monday, January 13, 2020, a unanimous three-judge panel of the New Jersey Appellate Division affirmed a Workers' Compensation Judge's (WCJ) decision ordering Respondent to reimburse Petitioner for the cost of his medical marijuana. Petitioner, Vincent Hagar, was a construction worker who sustained a serious back injury on the job in 2001 when a load of cement was dumped on him. Petitioner ultimately underwent two surgeries, including a two-level lumbar fusion in 2011, and was on a prolonged regime of opiates to treat his pain. Ultimately, he was referred for medical marijuana and was able to wean off of the opiate-based pain medication.

Respondent appealed the decision arguing that ordering them to reimburse Petitioner for the cost of medical marijuana would place them in violation of the Federal Controlled Substance Act (CSA). Respondent also argued that they should not have to cover the cost because the NJ Medical Marijuana Act (MMA) specifically precludes private insurance from having to pay for medical marijuana. Lastly, Respondent argued that it was not reasonable and necessary to treat his pain. The Court of Appeals rejected Respondent's arguments.

With respect to the argument that it would place them in violation of the CSA, which outlaws marijuana, Respondent argued that the NJ MMA is in direct conflict with the CSA and thus, is preempted by federal law. Respondent also argued that requiring them to reimburse the injured worker for the cost of his medical marijuana would require them to aid and abet in the commission of a federal crime. The Court rejected these arguments stating the specific language of the CSA states that it is a violation to "manufacture, distribut[e], or [be in] possession of marijuana." Since Respondent is doing none of these things, there is no conflict. The Court went further, stating that any violation of the CSA had already happened by the time Respondent reimbursed Petitioner. Thus they are not aiding and abetting as the crime has already taken place.

The Court pointed out that Respondent could provide no evidence of a federal prosecution, anywhere in the country of an insurance company or employer for having reimbursed an injured worker for the cost of their medical marijuana. Thus there is no credible threat of prosecution from the federal government. The opinion further discussed the federal budgetary protections that have been in place since 2014, which defunds the Department of Justice's budget from interfering with states implementing their medical marijuana laws.

Finally, the Court found the use of medical marijuana to be reasonable and necessary as the Petitioner obtained relief from it and this was supported by the testimony of the authorized physician. More specifically, the doctor testified that medical marijuana was a far better option than ongoing opiates. The Court rejected the position of Respondent's expert that he must live with his pain as "inhumane."

Comment: The New Jersey Appellate Division now joins the New Mexico Appellate Division in opining that the CSA does not preempt their medical marijuana law, as there is no direct conflict. As such, carriers and self-insureds will be unsuccessful in opposing payment on this basis going forward. Arguments can still be made that marijuana is not reasonable and necessary to treat injured workers' pain.

It is likely that this decision will be appealed to the New Jersey State Supreme Court and we will keep you apprised of any new developments.

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