

## New Jersey Supreme Court Rules Workers' Compensation Carrier Must Pay For Injured Worker's Medical Marijuana

The New Jersey Supreme Court ruled on Tuesday, April 13, 2021, that M&K Construction must reimburse an employee, Vincent Hager, for the cost of his medical marijuana in his workers' compensation case, upholding the lower court ruling.

Mr. Hager sustained an injury to his lumbar spine while working for M&K in 2001. Surgery was unsuccessful, leaving Mr. Hager with chronic pain that he managed with opiates until 2016 when he was approved for medical marijuana. Some of the evidence most impactful at trial was that Mr. Hager was able to reduce his opiate intake and alternatively treat his pain with medical marijuana. He ultimately submitted the receipts for the cost (2 ounces at \$616 a month) to the carrier for reimbursement and was denied. The Judge of Compensation ordered the employer to reimburse the petitioner for the cost of his medical marijuana. The ruling was upheld by the Appellate Division in its January 2020 decision. The matter was appealed to the New Jersey Supreme Court.

In a 7-0 decision, the Court stated it did not believe ordering the employer to reimburse the petitioner for the cost of his medical marijuana would require the employer to aid and abet in the commission of a federal crime. The Court discussed at length the Department of Justice's policy over the last twelve years to "deprioritize" the prosecution of those participating legally in a state's medical marijuana program. More specifically, Assistant United States Attorneys were directed through a series of memos from the Deputy Attorney General not to pursue such prosecutions. The Court also placed a lot of weight on Congress's amendments to the federal budget over the last seven years that specifically preclude the DOJ from using funds to pursue prosecutions of those participating in a state's legal medical marijuana program.

The Court opined that these amendments effectively suspend the Controlled Substance Act (CSA) in such circumstances, thus there is no violation of the federal law or the CSA. The Court goes on to state that there can be no aiding and abetting of a crime in the reimbursement of the cost of the medical marijuana by the employer here, as it is being court ordered to do so.

The Court also rejected M&K's argument that marijuana is not reasonable and necessary to treat Mr. Hager's pain. The Court held that through competent medical evidence marijuana was shown to restore some of the worker's function and relieve symptoms. The Court then held that although the Compassionate Use Act specifically precludes private health insurance from having to pay for the cost of medical marijuana this exemption does not cover employers or workers' compensation insurance from paying for an injured worker's medical marijuana. In rejecting the employer's argument the Court held that if the legislature intended to exclude workers' compensation from having to pay for the cost of medical marijuana they would have specifically stated the same in the Act. They did not.

Similar rulings have been issued recently by courts in New Hampshire, New Mexico, New York, and Connecticut, while the Supreme Courts of Maine and Massachusetts have ruled the opposite, holding that ordering a workers' compensation carrier to pay for the cost of medical marijuana would be requiring them to aid and abet in the commission of a federal crime.

Thus, for now, it is the law that workers' compensation carriers in New Jersey are required to pay for the cost of an injured workers' medical marijuana. However, it should be noted that in the majority of the cases wherein a Judge orders the carrier to pay, there is evidence that the injured worker was able to reduce his opiate intake in favor of medical marijuana to treat pain. As such, the facts of each case are important and an argument can still be made that marijuana is not reasonable and necessary depending on the

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situation. Further, we would not be surprised if M&K appeals this to the United States Supreme Court on the issue of conflict with federal law and, given the divergence of opinion amongst the states on this issue, the Supreme Court may take it.

We will keep you posted as new information on this issue comes about on both the state and federal levels.