

Pennsylvania Court Holds Employer Must Reimburse Out-of-Pocket Costs for Medical Marijuana

Article By:

Kathryn J. Russo

A Pennsylvania Court held that an employer violated the state Workers' Compensation Act (WCA) by refusing to reimburse an employee for out-of-pocket medical marijuana expenses related to a workplace injury. [*Fegley v. Firestone Tire & Rubber \(Workers' Comp. Appeal Bd.\)*, 2023 Pa. Commw. LEXIS 26 \(Commw. Ct. Mar. 17, 2023\)](#).

Claimant was injured during his employment and received medical treatment based on those injuries. He was prescribed narcotics for pain relief for 30 years. His doctor later recommended that he use medical marijuana to treat his pain rather than take narcotics. A Utilization Review determined the Claimant's medical marijuana treatment was reasonable and necessary. Still, the Workers' Compensation Judge denied Claimant's petition to be reimbursed for his medical marijuana treatment. Claimant appealed to the Workers' Compensation Board and then to a state court.

The court drew the distinction between "coverage" and "reimbursement" for medical marijuana expenses. Although the state Medical Marijuana Act (MMA) states that insurance carriers are not required to provide "coverage" for medical marijuana, "coverage" is not the same as "reimbursement" for medical expenses that are reasonable and necessary under the WCA. The court also noted that the MMA prohibits medical marijuana patients from being denied any rights or privileges because of their lawful use of medical marijuana. For those reasons, the employer (or its insurance carrier) would be required to reimburse Claimant for his use of medical marijuana to treat a work-related injury.

The court also reviewed whether the reimbursement of medical marijuana expenses would cause an insurance carrier to violate federal law. The court found that when insurance carriers reimburse claimants for out-of-pocket costs for the legal use of medical marijuana they do not violate the federal Controlled Substances Act because the carriers are not manufacturing, distributing, or dispensing a controlled substance. The employer is not prescribing marijuana but reimbursing the claimant for his lawful use of it.

(Darling Gutierrez contributed significantly to this post.)

National Law Review, Volume XIII, Number 102

Source URL: <https://natlawreview.com/article/pennsylvania-court-holds-employer-must-reimburse-out-pocket-costs-medical-marijuana>