

The New Jersey Supreme Court Granted Certification on and Employers Obligation to Reimburse for Medical Marijuana

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In Hager v. M&K Construction, 462 N.J. Super. 146 (App. Div. 2020), the petitioner, Vincent Hager, suffered a work-related back injury. After treating his ailments with surgeries and prescription opiates for years, the efficacy of the drugs diminished, and the side effects of his opiate use became debilitating. Eventually, Hager was referred to a pain management specialist and was prescribed medical marijuana pursuant to New Jersey's Compassionate Use Medical Marijuana Act (CUMMA). Thereafter, Hager filed a Worker's Compensation claim against M&K.

At the Worker's Compensation trial, Hager's doctors confirmed that the use of medical marijuana had in fact alleviated much of Hager's pain, and opined that marijuana was a safer treatment option than opioids. Ultimately, the judge concluded that Hager suffered a partial total disability, and that his prescription marijuana was reasonable and necessary to treat his chronic back pain. Accordingly, the judge ordered M&K to pay for his monthly medical marijuana prescription.

On appeal, M&K argued, in part, that ordering it to reimburse Hager for medical marijuana would force it to violate the Federal Controlled Substances Act (CSA), which does not recognize marijuana as an acceptable form of medical treatment. M&K also argued that Hager did not establish that his use of marijuana was "reasonable and necessary." The Appellate Division rejected each of M&K's arguments, finding that there was no conflict between the CSA and CUMMA, and that reimbursing a former employee for the cost of medication would not cause M&K to violate the CSA. Finally, deferring to the lower court's findings, the appellate panel found that medical marijuana was in fact a reasonable and necessary form of treatment under the Worker's Compensation Act (WCA).

The New Jersey Supreme Court granted certification on the following question: May a workers' compensation judge order an employer to reimburse its employee for the cost of the employee's medical marijuana prescribed for chronic pain following a work-related accident?

Alan Silber and Dillon McGuire of Pashman Stein Walder Hayden, P.C. submitted an *amici* brief to the Supreme Court on behalf of: (1) National Organization for the Reform of Marijuana Laws (NORML); (2) Garden State–NORML (GS-NORML); (3) Coalition For Medical Marijuana–NJ (CMM-NJ); and (4) Doctors For Cannabis Regulation (DFCR). The brief argues that the Court should affirm the appellate panel's decision because: (1) there is no conflict between the CSA and CUMMA; (2) reimbursing an employee for the costs of medical marijuana does not constitute an “aiding and abetting” offense under federal law; (3) the use of medical marijuana may be a “reasonable and necessary” form of treatment under the WCA.

The case is currently pending in the Supreme Court. Click [here](#) to view the January 13, 2020 decision.