Reimbursement for Cannabis Medical Expenses Argued before Massachusetts' SJC

Description

As of July 2020, thirty-three states and the District of Columbia have in some manner legalized cannabis for medical purposes. Other states have passed more limited laws and regulations allowing the medical use of only certain low-THC cannabis extracts. In these "legalizing" states – where patients, obeying state law, are being treated with cannabis – one might expect that health insurance companies would treat prescribed medical cannabis just like other prescribed medicines. However, this is generally not the case. Because cannabis remains unlawful under federal law and has not been approved by the FDA as a medication, there continues to be a sharp dividing line between medical cannabis and other medical treatments.

However, there are some indications that a certain type of insurance claim may begin to change the non-coverage paradigm for cannabis: workers' compensation. The Massachusetts' Supreme Judicial Court recently heard oral arguments in *Wright v. Central Mutual Ins. Co.*, a case where the Department of Industrial Accidents had denied a claim for reimbursement of medical cannabis expenses. Although it agreed that the two requirements for a workers' compensation claim were met (the treatment was "reasonably necessary" and provides a "positive benefit"), the Department of Industrial Accidents asserted that federal law on cannabis preempted the state's workers' compensation regime, and the administrative judge and reviewing board agreed.

The Administrative Judge in *Wright* had held that "there may come a day when medical marijuana is legal under the Federal Law and receives approval from the FDA. Until that time, despite the Employee's credible testimony, the claim must be denied." At hearing, claimant Wright had testified – and the Administrative Judge found – that "…medical marijuana provides a positive benefit for the Employee in relationship to his industrial injury…reduces his pain and increases his mobility…his sleep is better, and he has less anxiety and anger." Despite those findings and the stated credibility of Wright's own testimony, Wright's claim for reimbursement of medical marijuana was denied based on the illegality of medical marijuana under federal law and a lack of approval of cannabis as medicine from the federal government.

On appeal, Wright argued that several other states (New Mexico, Connecticut, New Jersey, Minnesota, and New Hampshire among them) have already upheld such reimbursement, and that the Supreme Judicial Court itself had already held that "ninety per cent of the States have enacted laws regarding medical marijuana that reflect their determination that marijuana, where lawfully prescribed by a physician, has a currently accepted medical use in treatment" in holding that federal law did not preempt Massachusetts law on medical cannabis.

The Court has not issued its decision yet, but that forthcoming decision in *Wright* may well mark another step forward in the normalization of cannabis as a standard, reimbursable part of medical treatment in one more state, and another indication that federal preemption in this area remains far from comprehensive.

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