

T.L. Fegley, as executrix of the State of P. Sheets v. Firestone Tire and Rubber E. Appel v. GWC Warranty Corporation

Pa. Cmwlth. Ct.

March 27, 2023

In a momentous decision, the Pennsylvania Workers' Compensation Landscape changed on March 24, 2023, when the Pennsylvania Commonwealth Court held that when a Workers' Compensation Judge finds the use of medical marijuana causally related to a work injury, the employer is required to reimburse the claimant for out-of-pocket expenses for the medical marijuana. The Court held that a workers' compensation carrier may be required to reimburse an injured claimant for medical marijuana treatment costs despite a provision in the Medical Marijuana Act stating that nothing in the Medical Marijuana Act should be construed to require an insurer or health plan to provide coverage for medical marijuana.

In these separate cases, injured employees began using medical marijuana to treat the pain associated with work related injuries. The Commonwealth Court analyzed §2102 of the Medical Marijuana Act-which provides that nothing in the Medical Marijuana Act shall be construed to require an insurer or health plan to provide coverage for medical marijuana-and found that the word coverage referred to an insurer paying a provider directly for the medical service.

The court next analyzed the WC Act requirement that calls for reimbursement to claimants for necessary and reasonable out of pocket expenses and costs for medical treatment and interpreted the word reimbursement as referring to the insurer paying the patient for costs incurred. Relying on its analysis, the MMA does not require coverage for medical marijuana, and coverage is distinct from reimbursement under workers' comp. The Court concluded that there was no statutory language prohibiting carriers from reimbursing clients who lawfully use medical marijuana to treat an accepted work injury when such treatment is medically reasonable and necessary.

The Court then turned to the interplay between the provision and the Federal Controlled Substances Act that makes them lawful to manufacture, distribute or dispense a controlled substance, in a section of the Medical Marijuana Act which states that nothing shall require an employer to commit any Act that would knowingly or intentionally violate federal law. The Court concluded that medical marijuana reimbursement would not cause an employer to violate federal law because the reimbursement is not the manufacturing, distribution or dispensing of medical marijuana.

In addition, in the Fegley decision, the Court ruled that the employer's failure to reimburse was in violation of the Workers' Compensation Act and in Appel, the Court held that the WC Act mandates employers to reimburse claimants for out-of-pocket expenses for medical treatment which has been found to be reasonable and necessary for the work-related injuries. With these decisions, the Court reversed the orders of Workers' Compensation Judges denying the employer's reimbursement claims.

I would assume that these cases will be appealed to the Pennsylvania Supreme Court.