

State of New Jersey
Department of Labor
and Workforce Development
Division of Workers' Compensation

S.S.#: _____
Steven McNeary
Petitioner
vs.
Freehold Township
Respondent

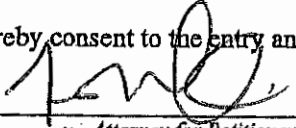
ORDER
for medical benefits

IT IS on this 28 day of June, 2018 ORDERED
as follows:

- ① Respondent shall reimburse Petitioner for ^{all} medical expenses/bills submitted to Respondent to date;
- ② Respondent shall reimburse Petitioner for all medical expenses/bills ^{to be} submitted ~~through the A~~
- ③ Provisions of this order shall remain in effect ^{unless} future medical evidence requires;
- ④ Provisions of this order are based upon and limited to those issues presented to Judge Simon on June 28, 2018;
- ⑤ Reimbursement shall be paid to Petitioner's Attorney Trust Account;
- ⑥ Counsel fee award to be addressed at conclusion of Permanency award.

Date 6-28-18 
Judge of Compensation

We hereby consent to the entry and form of this Order and acknowledge receipt of a copy of same.


Attorney for Petitioner

Attorney for Respondent

Copies of this Amended Order were mailed and/or otherwise delivered to counsel for all parties. If no objection to this correction is received within seven (7) days from the above date, then such Amended Order shall be deemed effective. All other aspects of the original Order remain in full effect.

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND
WORKFORCE DEVELOPMENT
CLAIM PETITION NUMBERS 2007-10498,
2008-8094, 2014-10233

- - - - -X

STEVEN MCNEARY,

MEDICAL MOTION

Petitioner,

vs.

FREEHOLD TOWNSHIP,

Respondent.

- - - - -X

Date: June 28, 2018
Place: Freehold, New Jersey

B E F O R E:

THE HONORABLE LIONEL SIMON
JUDGE OF COMPENSATION

A P P E A R A N C E S:

THE WEISS GROUP
BY: LEONARD WEISS, ESQ.
ON BEHALF OF THE PETITIONER

SUPPLE, DIPOPOLO & WATSON, LLC
BY: JAMES SUPPLE, ESQ.
ON BEHALF OF THE RESPONDENT (PMA GROUP)

CAPEHART & SCATCHARD
BY: CHRISTINE SHEA, ESQ.
ON BEHALF OF THE RESPONDENT (QUAL-LYNX)

REPORTED BY: DENISE L. SWEET
CERTIFIED COURT REPORTER
License Number XI02042

JH BUEHRER & ASSOCIATES
884 Breezy Oaks Drive
Toms River, New Jersey 08753
(732) 295-1975

E X H I B I T S

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Exhibit Number	Description	Page
P-1	Referral Note	4
P-2	Attending Physician's Statement	4
P-3	Medical Marijuana Patient ID Card	4
P-4	Receipt of Dr. Schenker	4
P-5	New Jersey Department of Health Receipt	4
P-6	Compassionate Care Receipt	4
P-7	Breakwater Dispensary Receipt	4
P-8	Office Note of Spine and Pain Center	4

1 JUDGE SIMON: These are the matters
2 Steven McNeary versus Freehold Township, 2007-10498,
3 2008-8094 and 2014-10233. Counsel, appearances
4 please.

5 MR. WEISS: Good morning, your
6 Honor. Leonard Weiss from the Weiss Group for
7 petitioner, Steven McNeary.

8 MR. SUPPLE: James Supple on behalf
9 of the respondent.

10 MS. SHEA: Good morning, your
11 Honor. Christine Adinolfi Shea from Capehart and
12 Scatchard on behalf of the respondent, Freehold
13 Township, as insured by Qual-Lynx.

14 JUDGE SIMON: All right. Thank
15 you. Cutting to the chase, folks, I have eight
16 exhibits here that counsel, Mr. Weiss, intends to
17 move into evidence. P-1 is a referral note; P-2 is
18 the attending physician's statement; P-3 is the
19 medical marijuana patient ID card; P-4 is the
20 receipt for Dr. Schenker's evaluation; P-5 is a New
21 Jersey Department of Health receipt; P-6 is the
22 Compassionate Care receipt; P-7 is the Breakwater
23 Dispensary receipt and P-8 is the office note from
24 the Spine and Pain Center. Any objection to those
25 going into evidence?

1 MR. SUPPLE: No, your Honor.

2 MS. SHEA: No, your Honor.

3 JUDGE SIMON: All right. Those
4 will all be marked into evidence.

5 (Whereupon P-1 to P-8 were marked
6 into evidence.)

7 JUDGE SIMON: In a nutshell, these
8 are Toms River cases. Mr. McNeary resides in Ocean
9 County. I received a phone call a couple weeks ago
10 from Acting Supervisor Taglialatella, who indicated,
11 for various reasons, he did not wish to hear this
12 motion and I agreed with him, quite frankly, with
13 the state of things in the Division of Compensation.
14 I agreed to have the matters transferred up to me.

15 The point of, the reason why we're
16 here is because there is an application before the
17 Court to have the insurance company continue to pay
18 for medical marijuana. I understand that in the
19 past during the history of this case the excess
20 carrier represented by Capehart, is that correct?
21 You're not the excess?

22 MS. SHEA: No, we're not the
23 excess. We have a different claim, your Honor.

24 JUDGE SIMON: You have a different
25 claim. You're on one of the risks. Agreed to an

1 unallocated payment to get the ball rolling on this
2 without prejudice and with the understanding that
3 you'd be able to seek reimbursement at a later time
4 during the proceeding of the case; is that correct?

5 MS. SHEA: That's correct. And
6 prior to that, petitioner was getting it through
7 co-respondent.

8 JUDGE SIMON: Okay.

9 MS. SHEA: Or he was paying for it
10 on his own. I'm not sure.

11 JUDGE SIMON: I understand that in
12 the middle of the coming month of July, say
13 approximately two weeks from now, the petitioner's
14 supply of the authorized medical marijuana will run
15 out. So, the Court has agreed to hear this
16 application.

17 Now, starting with the obvious,
18 based upon P-1 through eight, I believe that the
19 petitioner has complied with the New Jersey Medical
20 Marijuana Act's requirement for the Court to
21 consider granting medical marijuana. Does anybody
22 disagree with that premise?

23 MR. SUPPLE: No, your Honor.

24 JUDGE SIMON: So, we all agree
25 under the New Jersey Medical Marijuana Act the

1 petitioner has complied.

2 The question I believe becomes, and
3 I'll leave it to you, to Mr. Supple, because I
4 understand you're opposing payment of this now, is
5 that recently a case has come down from the State of
6 Maine, from the Maine Supreme Court, which, in a
7 nutshell, indicates that it's unconstitutional for a
8 Maine lower court to order an insurance carrier to
9 pay for such things as it is in conflict with the
10 federal law.

11 MR. SUPPLE: That's correct, your
12 Honor.

13 JUDGE SIMON: Okay. Do you wish to
14 be heard on that point?

15 MR. SUPPLE: No, I raised that in
16 both my opposition to the motion and in my
17 conversations with Judge Tagliatella, indicating
18 that although it's legal for medical marijuana use
19 in New Jersey, there is a federal statute that makes
20 it prohibitive. I don't have, you indicated the
21 insurer, this is a self-insured township and I had
22 told Judge Tagliatella that I would not recommend
23 to an entity that they, essentially, violate federal
24 law and I raised the issue of preemption, that
25 federal law preempts any state statute in that

1 regard.

2 JUDGE SIMON: Mr. Weiss, do you
3 wish to be heard?

4 MR. WEISS: Yes, your Honor. First
5 of all, with regard to the Maine case, that has
6 never been provided to me. I don't even know what
7 case that is.

8 JUDGE SIMON: Well, there's this
9 thing called a computer, counsel.

10 MR. WEISS: Well, this is the first
11 time in the context of the case that he's mentioning
12 that, your Honor, and I don't know a citation to the
13 out of state case, so I think it's incumbent, just
14 like an unreported --

15 JUDGE SIMON: So you know,
16 counselor, it is on our website, the Division of
17 Compensation. We have it listed on the Department
18 of Labor's website. The director, Director
19 Wojtenko, wanted all of the comp judges to be aware
20 of its existence as it is the first case that has
21 addressed what is an issue that comes up in every
22 one of these cases. So, it's up there on the
23 website for you. But, anyway, go ahead.

24 MR. WEISS: And that being said, we
25 have no knowledge of whatever is stated in the Maine

1 statute, but the New Jersey statute addresses the
2 preemption issue. In fact, it's at NJSA --

3 JUDGE SIMON: I don't think,
4 counsel, let me cut you off there, because I don't
5 think any New Jersey statute can say this supersedes
6 federal law; okay? Was that the thrust of your
7 argument, counsel?

8 MR. WEISS: No, but it was part of
9 it.

10 JUDGE SIMON: Let's not use it,
11 because I don't like that argument. I don't buy
12 that argument. Give me something I can buy or I'll
13 give you something you can buy with that.

14 MR. WEISS: Okay. Well, let me
15 just complete that for a moment. I'll be very
16 brief. So, the statute is 24:61-2D and it
17 specifically states that, "New Jersey is not
18 required to enforce federal law. Compliance with
19 the act does not put New Jersey in violation of
20 federal law".

21 That being said, the Division of
22 Worker's Compensation is a court that is set up by
23 statute and I do not believe there has been any
24 jurisdictional grant to this Court to even consider
25 preemption arguments, constitutional arguments, like

1 there would be with a municipal court or with
2 Superior Court. In any event --

3 JUDGE SIMON: I don't think you
4 understood me when I said I hate this argument, but
5 since you're continuing to make it, go ahead,
6 because now I'll address it.

7 MR. WEISS: I just wanted to make
8 the record complete in that regard. I mean, I don't
9 question that there's a preemption clause, a
10 Supremacy Clause, but there's a dearth of case law
11 dealing with whether states can enforce federal law,
12 particularly with the case out in Arizona with the
13 immigration and I don't want to get into that.

14 JUDGE SIMON: So we're clear,
15 counsel, I'm not worried about a member of the New
16 Jersey State Police coming after you to prosecute
17 you as a co-conspirator. However, a DEA agent might
18 not be concerned with the New Jersey statute.

19 MR. WEISS: Might not be.

20 JUDGE SIMON: So, let's move on to
21 the next point.

22 MR. WEISS: Well, that's what I had
23 to address regarding that preemption argument, your
24 Honor.

25 JUDGE SIMON: Well, and I've

1 reviewed these, that argument before, counsel, and
2 there is no doubt there's a conflict here. It
3 exists. As some people know and as a lot of people
4 don't, my background is as a prosecutor on the
5 county and local level, 16 years doing work, and I'm
6 quite familiar with the drug statutes, the State's
7 drug statutes and even to a lesser degree the
8 federal drug statute. But, what is clear is that
9 these statutes, the legislative intent was to
10 curtail the use and distribution of illicit
11 narcotics for the purposes of the overall general
12 public health. And as we all know living in this
13 society, wherever drugs are, there's a terrible
14 increase in related crimes. Crimes from, everything
15 from burglary to homicide. And that, those are the
16 intentions of those federal, state and local
17 narcotics laws and I support them one hundred
18 percent.

19 I don't think the New Jersey
20 Medical Marijuana Act is in conflict with that. I
21 think it, you know, with all due deference to the
22 Maine Superior Court, it's like comparing apples and
23 oranges. I would also note that my understanding is
24 that in motor vehicle claims, what we call here
25 third-party claims, carriers have been doing this

1 for a long time. I honestly don't feel in my heart
2 of hearts that this is a conflict. Certainly I
3 don't understand how a carrier, who will never
4 possess, never distribute, never intend to
5 distribute these products, who will nearly sign a
6 check into an attorney's trust account is in any way
7 complicit with the distribution of illicit
8 narcotics. That's, basically, what I'm asking to
9 do, what I'm being asked to do.

10 What else is important to note here
11 is in this, Mr. McNeary's case, there is a
12 documented medical need and the concern is that Mr.
13 McNeary is going to become addicted to opioids,
14 percocet and others. And, quite frankly, this Court
15 is very aware of the tremendously, the explosion of
16 these narcotics on the streets in the United States
17 in the last decade, the tremendous amounts of death
18 and addiction that are associated with these
19 opioids. If there's anything criminal here, it's
20 how these drugs have been force fed to injured
21 people creating addicts.

22 I believe, and I think the science
23 supports this, is that medical marijuana is safer,
24 it's less addictive, it is better for the treatment
25 of pain. It is better for, in this particular case,

1 the muscular spacticity which Mr. McNeary suffers
2 from. The long-term prognosis is better and, quite
3 frankly, it is cheaper for the carriers. I think
4 it's the right thing to do and I feel no moral or
5 legal hesitancy in that.

6 I would welcome at some point in
7 time the Appellate Division in New Jersey or the
8 Supreme Court to address the issue, because clearly
9 then I will be bound by what they say, but I'm, the
10 New Jersey statute, the Worker's Compensation
11 statute, which originally came into being in 1911,
12 is social legislation and it changes with the times
13 and, quite frankly, I think it's time for us, as the
14 Division of Compensation, to try to get away from
15 these opioids which are killing people and I don't
16 say that lightly. They are killing people.

17 And as far as this Court is
18 concerned, I will, in this particular case, grant
19 the application. I will grant it for the initial 90
20 days, which is what I think I can do, and I'm going
21 to, unless something changes, counsel, I'm going to
22 ask that that be continued as long as the doctor
23 indicates so, but as long as we keep getting
24 doctor's notes saying it's still needed, it's still
25 needed, I would be inclined to grant the

1 application. I simply think it's the right thing to
2 do. And, again, I welcome a reviewing court to tell
3 me I'm right or I'm wrong. I frankly don't know. I
4 frankly think it's the right thing to do and I am
5 going to order it.

6 I will reserve on any application
7 to be repaid until the end of the case. Counsel,
8 I'm going to rely on Mr. Weiss and Mr. Supple to
9 prepare an order with the appropriate CP that I'm
10 ordering it under. I don't want to order it under
11 the wrong CP number. And I'm going to then, as you
12 gentlemen know, I'm being transferred to Toms River
13 coming up. I'm going to simply take the case back
14 with me down to Toms River where it belongs.

15 So, unless there's anything else, I
16 will order the medical marijuana, give me an order.
17 It's going to be \$150.00 stenographic fee to be paid
18 by both respondents. You guys will split that,
19 unless you want to take me up for appeal on that,
20 maybe you will, but it will be 75 each on the
21 stenographic fee and I would like transcripts,
22 please, to be split by the respondents. Anything
23 else?

24 MR. WEISS: When I prepare the
25 order, your Honor, so those receipts were in there

1 that Mr. McNeary paid out-of-pocket.

2 JUDGE SIMON: I'm sorry. What's
3 the question?

4 MR. WEISS: The question is, may I
5 include a provision in there for reimbursement to
6 him?

7 JUDGE SIMON: Yes, absolutely.
8 Yes. Definitely.

9 MR. WEISS: Okay. There was one
10 other receipt from the most recent exam by Schenker
11 that I gave to counsel. I don't have that receipt.

12 JUDGE SIMON: Work it out, guys.
13 I'm ordering that anything he paid for be covered.

14 MR. SUPPLE: And then your order
15 will say that as he buys the medical marijuana, he
16 will give the receipt to counsel and he will send it
17 to me and I will --

18 JUDGE SIMON: And you will send a
19 check to counsel.

20 MR. SUPPLE: Payable to his trust
21 account.

22 JUDGE SIMON: Correct. That's the
23 way we do it. Sorry.

24 MR. WEISS: Well, why am I involved
25 in that then?

1 JUDGE SIMON: I'm sorry. Your name
2 seems to be on the order. Counsel, that's a
3 provision of the Court's order; okay? And I'm
4 sorry. I realize it's inconvenient for a small law
5 firm, I've done it several times and I've done it
6 this way every time. It's an added layer of
7 protection for the respondents, which I don't think
8 they need, but they seek. They're simply paying you
9 money. What you do with it, bios con dios. Off the
10 record.

11 (Discussion off the record.)

12 MR. WEISS: That's exactly my
13 point.

14 JUDGE SIMON: Counsel, we're all
15 complicit, if we're complicit. It's going into your
16 trust account. I don't think there's anything to
17 worry about here; all right? Fair enough? All
18 right. Do what you have to do to make copies. I'll
19 wait for an order to sign.

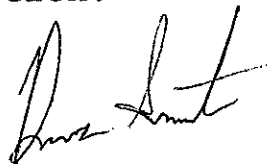
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C E R T I F I C A T E

I, DENISE L. SWEET, a Certified Court Reporter and Registered Professional Reporter, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney or counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



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