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Pa. Justices Won't Review Housing Rules For Medical Pot

By Sarah Jarvis

Law360 (September 15, 2021, 3:05 PM EDT) -- The Supreme Court of Pennsylvania has declined to take up an appeal over whether a public housing agency must create rules for users of medical cannabis, letting stand a lower court's ruling that the agency has a mandate to do so under federal housing law.

Tuesday's one-sentence order denying an appeal petition from the Indiana County Housing Authority comes after the majority of a panel in the Commonwealth Court of Pennsylvania **found in February** that the agency must develop a policy on when a medical pot user can be denied access to public housing. The majority also said the housing authority must apply those standards when determining plaintiff Mary Cease's eligibility for Section 8 housing.

"Given the current circumstances regarding the medically accepted use and ambiguous status of medical marijuana, establishment of fair and reasonable standards regarding the use of that substance under medical supervision is particularly called for here," Judge Bonnie Brigrance Leadbetter wrote for the majority of the Commonwealth Court panel in February.

Counsel for Cease argued there is room under the federal Quality Housing and Work Responsibility Act, or QHWRA, to allow her to receive Section 8 assistance because medical marijuana is legal in the state and didn't fall under a prohibition on "illegal use" of controlled substances.

Pennsylvania approved the use of medical marijuana for qualifying conditions in 2016. Cease, who was approved to use medical marijuana in 2017 to treat chronic pain and post-traumatic stress disorder, had moved to Indiana County from public housing in Luzerne County to escape domestic abuse, her attorney told the panel last year. She had not had her medical marijuana card while living in Luzerne County, he said.

Cease had to reapply for Section 8 in Indiana County, and when she admitted on her application that she used medical marijuana, she was denied. The Indiana County Court of Common Pleas upheld that decision, her attorney said.

Counsel for the housing authority said last year that guidance memos from the U.S. Department of Housing and Urban Development had explicitly told agencies they had no discretion in interpreting the Controlled Substances Act, under which marijuana is illegal.

But in February, the majority panel in the lower court pointed to Section 13661 of QHWRA, which says the housing authority "shall establish standards that prohibit admission to the program" for applicants whom the agency determines are illegally using controlled substances. The majority contrasted that with a different section of QHWRA regarding sex offenders, which indicates the housing authority "shall prohibit admission" to such applicants.

There is a difference between "shall establish standards that prohibit admission" and "shall prohibit admission," the majority said, otherwise the phrase "establish standards" is meaningless.

"Accordingly, we construe the mandate in Section 13661(b)(1)(A) of QHWRA as allowing for flexibility to determine when and on what basis admission is prohibited, rather than mandating an outright prohibition," Judge Leadbetter said.

In a dissent, Judge Patricia A. McCullough said public housing authorities have no discretion and must deny Section 8 housing program admission to current drug users. She said the majority essentially found that the federal Controlled Substances Act is unconstitutional — a finding she described as "tantamount to overruling an act of the United States Congress and well-established precedent from the United States Supreme Court."

Counsel for the parties didn't immediately respond to requests for comment Wednesday.

Cease is represented by Kevin J. McKeon and Judith D. Cassel of Hawke McKeon & Sniscak LLP and Micah R. Bucy of Martineau King PLLC.

The Housing Authority of Indiana County is represented by Michael J. Supinka and Kevin R. Gaydos of Supinka & Supinka PC.

The case is Mary Cease v. Housing Authority of Indiana County, case number 74 WAL 2021, in the Supreme Court of Pennsylvania.

--Additional reporting by Matthew Santoni. Editing by Stephen Berg.

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