

DECISION No 194
of 17 December 2003
concerning the uniform application of Article 22(1)(a)(i) of Council Regulation (EEC) No 1408/71
in the Member State of stay

(Text with relevance for the EEA and for the EU/Switzerland Agreement)

(2004/327/EC)

THE ADMINISTRATIVE COMMISSION ON SOCIAL SECURITY FOR MIGRANT WORKERS,

Having regard to Article 81(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community ⁽¹⁾, pursuant to which the Administrative Commission is responsible for dealing with all administrative matters and questions of interpretation arising from the provisions of Regulation (EEC) No 1408/71 and subsequent Regulations,

Having regard to Articles 22, 25 and 31 of Regulation (EEC) No 1408/71 concerning benefits in kind during a temporary stay in a Member State other than the competent State,

Whereas:

- (1) On 27 June 2003, the Commission adopted a proposal for a regulation ⁽²⁾ amending Regulation (EEC) No 1408/71 and Council Regulation (EEC) No 574/72 ⁽³⁾ concerning the alignment of rights and the simplification of procedures. The purpose of this proposal for a Regulation is to align the rights of all categories of insured persons so that they are entitled to all benefits in kind which become medically necessary during a stay on the territory of another Member State, taking account of the nature of the benefits and the length of the stay ⁽⁴⁾.
- (2) According to Decisions Nos 189, 190 and 191 of the Administrative Commission ⁽⁵⁾, the European health insurance card will start to replace form E 111 as of 1 June 2004.
- (3) According to Article 22(1)(a)(i), Article 25(1)(a) and Article 31(1)(a) of Regulation (EEC) No 1408/71 and Articles 21, 26 and 31 of Regulation (EEC) No 574/72, as amended by the Commission's proposal for a regulation of 27 June 2003 ⁽⁶⁾, an insured person is entitled, on the basis of the European health insurance card or its equivalent, to receive benefits in kind which become medically necessary, taking account of the nature of these benefits and the length of stay. These benefits will be granted in accordance with the provisions in force in the Member State of stay and in accordance with the prices or systems applicable in that Member State.
- (4) The institution in the place of stay has the right to reimbursement from the competent institution of benefits in kind granted on the basis of a valid European health card or a valid equivalent. This reimbursement obligation was referred to in Article 2 of Decision No 189.
- (5) According to Articles 21, 26 and 31 of Regulation (EEC) No 574/72, as amended by the aforementioned Commission proposal for a regulation, insured persons for whom benefits in kind become medically necessary during a temporary stay in another Member State can approach health-care providers directly without first contacting the social security institution in the place of stay.
- (6) It is therefore necessary to define the scope of Article 22(1)(a)(i), Article 25(1)(a) and Article 31(1)(a), as amended by the aforementioned proposal for a regulation, with a view to adopting criteria ensuring that these provisions are applied in a uniform and balanced way by health care providers. These clarifications do not apply in situations where the aim of the temporary stay is to receive medical treatment.

⁽¹⁾ OJ L 149, 5.7.1971, p. 2.

⁽²⁾ COM(2003) 378 final.

⁽³⁾ OJ L 74, 27.3.1972, p. 1.

⁽⁴⁾ A policy agreement on this proposal was concluded at the Council meeting of 20 October 2003.

⁽⁵⁾ OJ L 276, 27.10.2003.

⁽⁶⁾ See footnote 2.

- (7) The criteria set out in Article 22(1)(a)(i), Article 25(1)(a) and Article 31(1)(a), as amended by the Commission's proposal, cannot be interpreted in such a way that chronic or existing illnesses are excluded. The Court of Justice ruled ⁽⁷⁾ that the concept of 'necessary treatment' cannot be interpreted 'as meaning that those benefits are limited solely to cases where the treatment provided has become necessary because of a sudden illness. In particular, the circumstance that the treatment necessitated by developments in the insured person's state of health during his temporary stay in another Member State may be linked to a pre-existent pathology of which he is aware, such as a chronic illness, does not mean that the conditions for the application of these provisions are not fulfilled'.

HAS DECIDED AS FOLLOWS:

1. Benefits in kind which become medically necessary and which are granted to a person staying temporarily in another Member State, are covered by the provisions of Article 22(1)(a)(i), Article 25(1)(a) and Article 31(1)(a) with a view to preventing an insured person from being forced to return before the end of the planned duration of stay to the competent State to obtain the treatment he/she requires.

The purpose of benefits of this type is to enable the insured person to continue his/her stay under safe medical conditions, taking account of the planned length of the stay.

However, the situation where the aim of the temporary stay is to receive medical treatment, is not covered by these provisions.

2. In order to determine whether a benefit in kind meets the requirements set out in Article 22(1)(a)(i), Article 25(1)(a) and Article 31(1)(a), only medical factors within the context of a temporary stay, taking into account the medical condition and past history of the person considered, shall be considered.
3. This Decision shall be published in the *Official Journal of the European Union*. It shall come into force on the first day of the month following its publication but shall not have effect until 1 June 2004.

*The Chairman of the Administrative
Commission*

Giuseppe MICCIO

⁽⁷⁾ Case C-326/00 *Ioannidis* judgment of 25 February 2003.