

DECISION No S4
of 2 October 2009
concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No
883/2004 of the European Parliament and of the Council

(Text of relevance to the EEA and to the EC/Switzerland Agreement)

(2010/C 106/17)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF
SOCIAL SECURITY SYSTEMS,

Acting in accordance with the conditions laid down in
Article 71(2) of Regulation (EC) No 883/2004,

Having regard to Article 72(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems ⁽¹⁾, under which the Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems ⁽²⁾,

Having regard to Articles 35 and 41 of Regulation (EC) No 883/2004,

Having regard to Articles 66 to 68 of Regulation (EC) No 987/2009,

Whereas:

- (1) The cost of the benefits in kind provided by the institution of one Member State on behalf of the institution of another Member State, shall be fully refunded.
- (2) The refunds between institutions, if not otherwise agreed, must be carried out with speed and efficiency in order to prevent a built-up of claims which remain unsettled for longer periods of time.
- (3) An accumulation of claims could endanger the efficient functioning of the Community system and jeopardise the right of individuals.
- (4) The Administrative Commission in Decision No S1 ⁽³⁾ has decided that the institution of the place of stay shall be reimbursed for the cost of health care provided on the basis of a valid European Health Insurance Card.
- (5) Commonly agreed best practices would contribute to a speedy and efficient settlement of refunds between the institutions.

HAS DECIDED AS FOLLOWS:

A. Reimbursement on the basis of actual expenditure
(Article 62 of Regulation (EC) No 987/2009)

1. The institution which claims a refund based on actual expenditure shall introduce the claim at the latest within the deadline mentioned in Article 67(1) Regulation (EC) No 987/2009 (hereinafter 'Implementing Regulation'). The institution which receives a claim shall ensure the payment of the claim within the time limit provided for in Article 67(5) of the Implementing Regulation but before this deadline as soon as it is in a position to do so.
2. Claims for refund of benefits, which have been provided on the basis of a European Health Insurance Card (EHIC), a document replacing the EHIC or any other entitlement document, may be rejected and the claim returned to the creditor institution in case the claim, for example:
 - is incomplete and/or incorrectly filled out,
 - concerns benefits which have not been given within the validity period of the EHIC or the entitlement document used by the recipient of the benefits.

A claim may not be rejected on the grounds that the person has ceased to be insured with the institution, which has issued the EHIC or the entitlement document, provided that the benefits were given to the beneficiary within the validity period of the document used.

An institution which is obliged to refund the cost of benefits provided on the basis of an EHIC may request that the institution with which the person was rightly registered at the time of the award of the benefits shall refund the cost of those benefits to the first institution, or if the person was not entitled to use the EHIC, settle the matter with the person concerned.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

⁽³⁾ See page 23 of this Official Journal.

3. A claim may not be reviewed by the debtor institution as regards its compliance with Articles 19 and 27(1) of Regulation (EC) No 883/2004, unless there are reasonable grounds to suspect abuse as clarified under the case-law by the European Court of Justice ⁽¹⁾. The debtor institution is consequently obliged to accept the information on which the claim is based and to reimburse the claim. In the case there is suspicion of abuse the debtor institution may for relevant reasons reject the claim as provided for under Article 67(5) of the Implementing Regulation.
4. For the purpose of the application of points 2 and 3, if the debtor institution expresses doubts as to the correctness of the facts, on which a claim is based, it is incumbent on the creditor institution to reconsider, whether the claim was properly issued and, if appropriate, to withdraw or recalculate the claim.
5. A claim, which is introduced after the deadline specified in Article 67(1) of the Implementing Regulation, shall not be considered.

B. Reimbursement on the basis of fixed amounts (Article 63 of Implementing Regulation)

6. The inventory provided for in Article 64(4) of the Implementing Regulation shall be presented to the liaison body of the debtor member State by the end of the year following the reference year, and the claims based on this inventory shall be introduced to the same body as soon as possible following the publication in the *Official Journal of the European Union* of the annual fixed amounts per person, but within the time limit provided for in Article 67(2) of the Implementing Regulation.
7. The creditor institution shall whenever possible present the claims which concern a particular calendar year on the same occasion to the debtor institution.
8. The debtor institution which receives a claim for a refund determined on the basis of fixed amounts shall ensure the payment of the claim within the time limit provided for in Article 67(5) of the Implementing Regulation but before this deadline as soon as it is in a position to do so.

9. A claim, which is introduced after the deadline specified in Article 67(2) of the Implementing Regulation, shall not be considered.
10. A claim for a refund determined on the basis of fixed amounts may be rejected and returned to the creditor institution in case the claim, for example:
 - is incomplete and/or incorrectly filled out,
 - refers to a time period which is not covered by registration on the basis of valid entitlement document.
11. If the debtor institution expresses doubts as to the correctness of the facts on which a claim is based, it is incumbent on the creditor institution to reconsider, whether the invoice was properly issued and, if appropriate, to withdraw or recalculate the claim.

C. Down payments under Article 68 of Implementing Regulation

12. In case of making a down payment under Article 68 of the Implementing Regulation, the amount to be paid shall be determined separately for claims based on actual expenditure (Article 67(1) of the Implementing Regulation) and claims based on fixed amounts (Article 67(2) of the Implementing Regulation).

D. Cooperation and Exchange of information

13. The institutions should ensure a good cooperation between themselves and act as implementing their own legislation.

E. Entry into force

14. This Decision shall be published in the *Official Journal of the European Union*. It shall apply from the date of entry into force of Regulation (EC) No 987/2009.

The Chair of the Administrative Commission

Lena MALMBERG

⁽¹⁾ Judgement of 12 April 2005 in case C-145/03 *Heirs of Annette Keller v Instituto Nacional de la Seguridad Social (INSS) and Instituto Nacional de Gestión Sanitaria (Ingresa)* ECR [2005] p. I-02529.