

DECISION No S5**of 2 October 2009**

on interpretation of the concept of 'benefits in kind' as defined in Article 1(va) of Regulation (EC) No 883/2004 of the European Parliament and of the Council in the event of sickness or maternity pursuant to Articles 17, 19, 20, 22, 24(1), 25, 26, 27(1, 3, 4 and 5), 28, 34 and 36(1 and 2) of Regulation (EC) No 883/2004 and on calculation of the amounts to be refunded under Articles 62, 63 and 64 of Regulation (EC) No 987/2009 of the European Parliament and of the Council

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

(2010/C 106/18)

THE ADMINISTRATIVE COMMISSION FOR THE COORDINATION OF SOCIAL SECURITY SYSTEMS,

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,

Whereas:

- (1) For the purposes of application of Articles 17, 19, 20, 22, 24(1), 25, 26, 27(1, 3, 4 and 5), 28, 34 and 36(1 and 2) of Regulation (EC) No 883/2004, a precise meaning, binding on all Member States, should be attached to the concept of sickness and maternity 'benefits in kind' as defined in Article 1(va) of Regulation (EC) No 883/2004.
- (2) The concept of sickness and maternity benefits in kind, in accordance with the case law of the European Court of Justice must include benefits in kind provided to persons reliant on care.

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

HAS DECIDED AS FOLLOWS:

I. General provisions

1. The sickness and maternity benefits in kind to be considered when calculating the refunds referred to in Articles 62, 63 and 64 of Regulation (EC) No 987/2009 (hereinafter 'Implementing Regulation') shall be those regarded as benefits in

kind under the national legislation administered by the institution which has provided the benefits in so far as they can be acquired in accordance with the provisions of Articles 17, 19, 20, 22, 24(1), 25, 26, 27(1, 3, 4 and 5), 28, 34 and 36(1 and 2) of Regulation (EC) No 883/2004 (hereinafter 'Basic Regulation').

2. The following shall also be regarded as benefits in kind within the meaning of the abovementioned Articles of the Basic Regulation:

- (a) care insurance benefits in kind giving entitlement to full or partial direct payment of certain expenditure entailed by the insured person's reliance on care and incurred for his or her direct benefit, for example nursing care and home help provided in the home or in specialised establishments, purchases of care equipment, or work carried out to improve the home environment; benefits of this kind are essentially intended to supplement sickness insurance benefits in kind in order to improve the state of health and the quality of life of persons reliant on care;
- (b) benefits in kind not arising from care insurance but having the same characteristics and purposes as those referred to in (a) above, in so far as they may be regarded as social security benefits in kind within the meaning of the Basic Regulation and may be acquired in the same way as those referred to in (a) in accordance with the provisions of the abovementioned Articles of the Basic Regulation.

The benefits in kind referred to in (a) and (b) shall be included in the expenditure referred to in point 1 above.

3. The following shall not be regarded as costs for benefits in kind within the meaning of the abovementioned Articles of the Basic Regulation:

- (a) Expenditure linked to the administration of the sickness insurance scheme, for example costs which are incurred by the handling and processing of reimbursements to individuals and between institutions;

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

(b) Expenditure linked to the award of benefits, such as doctor's fees for issuing medical certificates needed to evaluate a claimant's degree of invalidity or ability to perform work;

(c) Expenditure on medical research and subsidies to institutions of preventive medicine, granted for general health protection measures, as well as expenditure on measures of a general (not risk-related) nature;

(d) Co-payments made by individuals.

II. Provisions for the calculation of the fixed amounts provided for in Article 63 of Implementing Regulation

4. The calculation of the monthly and total fixed amounts in accordance with Article 64 of the Implementing Regulation shall include the following:

(a) the amount of benefits in kind provided under the national schemes in the Member State of residence on the basis of Articles 17, 24(1), 25 and 26 of the Basic Regulation;

(b) the amount of benefits in kind provided on the basis of scheduled treatment outside the Member State of residence in accordance with Articles 20 and 27(3) and (5) of the Basic Regulation;

(c) the cost of benefits in kind provided which an insured person received during temporary stay outside the state of residence in so far as the costs of those benefits have

to be carried under national law; except for the costs provided for in point II paragraph 5 letter (a) of this Decision.

5. The calculation of the monthly and total fixed amounts in accordance with Article 64 of the Implementing Regulation shall not include the following:

(a) the amount of benefits provided during a temporary stay outside the state of residence on the basis of Articles 19(1) and 27(1) of the Basic Regulation;

(b) the amount of benefits refunded in accordance with the Basic Regulation or on the basis of bilateral or multi-lateral agreements with the exception of refunds for scheduled treatment.

III. Other provisions

6. The calculation of the amounts to be refunded shall as far as possible be based on the official statistics and accounts of the place of stay or residence, and preferably on the published official data. The sources of the statistics used shall be indicated.

7. 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
