

DECISION No S3

of 12 June 2009

defining the benefits covered by Articles 19(1) and 27(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council and Article 25(A)(3) 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 106/10)

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 19 and 27 of Regulation (EC) No 883/2004 concerning benefits in kind during a temporary stay in a Member State other than the competent State,

Having regard to Article 25(A)(3) of Regulation (EC) No 987/2009,

Whereas:

- (1) According to Articles 19(1) and 27(1) of Regulation (EC) No 883/2004, an insured person is entitled to receive during a temporary stay in a Member State other than the State of residence, benefits in kind which become medically necessary, taking into account the nature of these benefits and the length of stay.
- (2) According to Article 25(A)(3) of Regulation (EC) No 987/2009, the benefits referred to in Article 19(1) of Regulation (EC) No 883/2004 shall refer to the benefits in kind which are provided in the Member State of stay, in accordance with its legislation, and which become necessary on medical grounds 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 Member State to obtain the necessary treatment.
- (3) Article 25(A)(3) of Regulation (EC) No 987/2009 has to be interpreted in such a way that all benefits in kind provided in conjunction with chronic or existing illnesses are covered by this provision. The Court of

Justice ruled ⁽³⁾ 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 a 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-existed 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'.

- (4) Article 25(A)(3) of Regulation (EC) No 987/2009 has to be interpreted in such a way that benefits in kind provided in conjunction with pregnancy and childbirth are covered by this provision. However, this provision does not cover the situation where the aim of the temporary stay abroad is to give birth.
- (5) Pursuant to Article 19(2) of Regulation (EC) No 883/2004, the Administrative Commission has been instructed to draw up a list of benefits in kind which, in order to be provided during a stay in another Member State, require for practical reasons a prior agreement between the person concerned and the institution providing the care.
- (6) The objective of the prior agreement provided for in Article 19(2) of Regulation (EC) No 883/2004 is to guarantee the continuity of the treatment needed by an insured person during a stay in another Member State.
- (7) In the light of this objective, the essential criteria for defining the benefits in kind requiring a prior agreement between the patient and the unit providing care in another Member State are the vital nature of the medical treatment and the fact that this treatment is accessible only in specialised medical units and/or by specialised staff or/and equipment. A non-exhaustive list based on these criteria is given in the Annex to this Decision.

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

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

⁽³⁾ Case C-326/00, Ioannidis, judgement of 25 February 2003.

HAS DECIDED AS FOLLOWS:

1. The benefits in kind to be provided under Articles 19(1) and 27(1) of Regulation (EC) No 883/2004 and Article 25(A)(3) of Regulation (EC) No 987/2009 shall include benefits provided in conjunction with chronic or existing illnesses as well as in conjunction with pregnancy and childbirth.
2. Benefits in kind, including those in conjunction with chronic or existing illnesses or in conjunction with childbirth, are not covered by these provisions when the objective of the stay in another Member State is to receive these treatments.
3. Any vital medical treatment which is only accessible in a specialised medical unit and/or by specialised staff and/or equipment must in principle be subject to a prior

agreement between the insured person and the unit providing the treatment in order to ensure that the treatment is available during the insured person's stay in a Member State other than the competent Member State or the one of residence.

A non-exhaustive list of the treatments which fulfil these criteria is given in the Annex hereto.

4. 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
Gabriela PIKOROVÁ

ANNEX

- kidney dialysis
 - oxygen therapy
 - special asthma treatment
 - echocardiography in case of chronic autoimmune diseases
 - chemotherapy
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