


EFTA SURVEILLANCE AUTHORITY

PERSONS, SERVICES AND CAPITAL MOVEMENTS DIRECTORATE

Case Handler: Resberg, Anne-Louise
Tel.: 286 1862

Brussels, 15 May 2000
Doc. No: 00-3678-D ✓
Ref. No: SEA043.400.013

Dear Sir/Madam,

Subject: Complaint against Norway - Sickness benefits in cash

I should like to inform you that the EFTA Surveillance Authority has received a complaint against Norway [REDACTED] alleging that the Norwegian rules concerning entitlement to Norwegian cash sickness benefits during a temporary stay in another EEA State than Norway are in conflict with the EEA Agreement. [REDACTED], and she was refused cash sickness benefits for the period during which she was on sick leave [REDACTED]. Her diagnosis was confirmed by a Norwegian doctor, and she is still on sick leave.

[REDACTED], a Norwegian national, resides and works in Norway, and accordingly, she is insured under the Norwegian Social Insurance Scheme. She lodged an appeal against the refusal by the social security institution, [REDACTED], but the competent body of appeal, [REDACTED] dismissed the appeal.

The complaint has been registered by the Authority and is now being examined in the Persons, Services and Capital Movements Directorate.

On the basis of the examination of the complaint and the documents submitted by the complainant, it is the Authority's understanding that the rules in question, which are laid down in Section 8-9 of the National Insurance Act No 19 of 28 February 1997, are as follows:

There is a requirement for entitlement to cash sickness benefits from Norway that the person stays in that State. There are exemptions from this rule. First, specific categories of persons who are insured under the Norwegian Social Insurance Scheme while residing outside Norway are exempted from the rule. Second, a worker who is insured under the Norwegian Social Insurance Scheme and who falls sick during a temporary stay abroad, is

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entitled to daily cash sickness benefits for this period only in so far as the person is hospitalised during the same period.

In addition to these exemptions, there is a possibility to receive cash sickness benefits on application for a limited period during a stay abroad. The person concerned has to establish that the stay abroad will not aggravate the illness, prolong the incapacity for work or prevent the supervision and follow up by the local social security institution.

It is the Authority's understanding that the above mentioned rules do not apply to EEA nationals who work in Norway, but reside in another EEA State and become ill in that State. However, these rules apply to EEA nationals who fall sick during a temporary stay in another EEA State than Norway.

Article 22(1)(a)(ii) of *Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community* (hereinafter referred to as "Regulation 1408/71"), stipulates that an employed person who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, and whose condition necessitates immediate benefits during a stay in the territory of another Member State shall be entitled to cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers.

In other words, a worker is entitled to sickness benefits in cash in accordance with the legislation of the State where the worker is insured, regardless of which State he/she stays in.

In addition, Articles 24 and 18 of Regulation 574/72 which implement Article 22 as regards cash benefits lay down the procedures for the follow up of such cases by both the institution of the place of stay and the competent institution.

It is settled case law of the Court of Justice of the European Communities that it is for the national legislation to lay down the conditions for acquisition, retention, loss or suspension of the right to social security benefits as long as those conditions apply without discrimination to the nationals of the Member State concerned and to those of other Member States. It follows that a worker has to fulfil the conditions for the benefits in question in order to be eligible for those benefits.

However, a Member State is not free to lay down any condition it wishes. For example, if a Member State could make the payment of cash sickness benefits conditional upon the person concerned staying in that State, the purpose of Article 22(1)(a)(ii) of Regulation 1408/71 would be undermined.

In order for the Authority to further examine and assess the complaint, your Government is requested to submit its observations on the case and in particular, the compatibility of the above mentioned Norwegian rules with Regulation 1408/71.



May I request your Government to submit the above information so that it reaches the Authority at the latest *by 19 June 2000*.

As the complainant has given her approval to disclose her identity, a copy of the complaint is enclosed.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Lars Lindh', written over the printed name.

Lars Lindh
Director

Enclosure

