

DECISION No S7
of 22 December 2009
concerning the transition from Regulations (EEC) Nos 1408/71 and 574/72 to Regulations (EC) Nos 883/2004 and 987/2009 and the application of reimbursement procedures

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

(2010/C 107/05)

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 ⁽²⁾,

Having regard to Articles 87 to 91 of Regulation (EC) No 883/2004,

Having regard to Article 64(7) and Articles 93 to 97 of Regulation (EC) No 987/2009,

Whereas:

- (1) Regulations (EC) Nos 883/2004 and 987/2009 enter into force on 1 May 2010 and Regulations (EEC) Nos 1408/71 and 574/72 shall be repealed on the same date, except for the situations governed by Article 90(1) of Regulation (EC) No 883/2004 and Article 96(1) of Regulation (EC) No 987/2009.
- (2) It is necessary to clarify the determination of debtor and creditor Member State in situations where benefits in kind were provided or authorised under Regulations (EEC) Nos 1408/71 and 574/72 but the reimbursements of costs for these benefits are settled after Regulations (EC) Nos 883/2004 and 987/2009 enter into force, in particular where the competence for bearing of the costs changes under the new Regulations.
- (3) It is necessary to clarify which procedure for reimbursement shall be applied in situations where benefits in kind were provided under Regulations (EEC) Nos 1408/71 and 574/72 but the reimbursement procedure takes place after the date of entry into force of Regulations (EC) Nos 883/2004 and 987/2009.
- (4) Paragraph 5 of Decision No H1 clarifies the status of certificates (E-forms) and the European Health Insurance Card (including the Provisional Replacements Certificates) issued before the date of entry into force of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.
- (5) Provisions of paragraph 4 of Decision S1 and paragraph 2 of Decision No S4 lay down the general principles on the responsibility for the costs of benefits provided on

the basis of a valid European Health Insurance Card (EHIC) which should also apply in transitional situations.

- (6) Under Article 62 and 63 of Regulation (EC) No 987/2009 those Member States that are not listed in Annex 3 of Regulation (EC) No 987/2009 shall reimburse benefits in kind supplied to family members who do not reside in the same Member State as the insured person and to pensioners and members of their family on the basis of actual expenditure as from 1 May 2010.
- (7) The costs of benefits in kind provided under Articles 19(1), 20(1) and Article 27(1) and 27(3) of Regulation (EC) No 883/2004 shall be borne by the competent institution responsible for the costs of benefits in kind provided to family members who do not reside in the same Member State as the insured person and to pensioners and members of their family in their Member State of residence.
- (8) Under Article 64(7) of Regulation (EC) No 987/2009 Member States listed in Annex 3 may after 1 May 2010 continue to apply for five years Articles 94 and 95 of Regulation (EEC) No 574/72 for the calculation of the fixed amounts.
- (9) The Regulation (EC) No 987/2009 introduces new procedures for reimbursements of healthcare costs with the aim of speeding up the refunds between Member States and preventing a build-up of claims which remain unsettled for longer periods of time.
- (10) There is a need for transparency and guidance for the institutions in the situations referred above to ensure unified and coherent application of Community provisions.

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

HAS DECIDED AS FOLLOWS:

I. Transitional arrangements for determining the Member State responsible for bearing the costs of scheduled treatment and necessary care with regard to the change in competence under Regulation (EC) No 883/2004

1. If a treatment was supplied to a person before 1 May 2010, the competence for bearing the person's costs shall be determined in accordance with the provisions of Regulation (EEC) No 1408/71.

⁽¹⁾ OJ L 166, 30.4.2004, p. 1.

⁽²⁾ OJ L 284, 30.10.2009, p. 1.

2. If a person was authorised to go to the territory of another Member State to receive there the treatment appropriate to his/her condition (scheduled treatment) under Regulations (EEC) Nos 1408/71 and 574/72 and the treatment is provided partly or entirely after 30 April 2010, the costs of the entire treatment shall be borne by the institution which granted the authorisation.

3. If a treatment started to be supplied to a person under Article 22(3)(a) or Article 31(1)(a) of Regulation (EEC) No 1408/71, the costs of such treatment should be borne in accordance with provisions of these Articles even if the competence for bearing the person's costs has changed according to the provisions of Regulation (EC) No 883/2004. Nevertheless, if the treatment continues after 31 May 2010, the costs incurred after that date shall be borne by the institution competent under Regulation (EC) No 883/2004.

4. If a treatment was provided under Article 19(1) or 27(1) of Regulation (EC) No 883/2004 after 30 April 2010 on basis of valid EHIC issued before 1 May 2010, the claim for the reimbursement of the costs of such treatment cannot be rejected on the grounds that the competence for persons' healthcare costs has changed according to the provisions of Regulation (EC) No 883/2004.

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.

II. Transitional arrangements for calculation of Average costs

1. The method of calculation of Average costs for years up to and including 2009 shall be subject to provisions of Articles 94 and 95 of Regulation (EEC) No 574/72 even if the Average costs are presented to the Audit Board after 30 April 2010.

2. Member States not listed in Annex 3 of Regulation (EC) No 987/2009 can, for the period from 1 January 2010 until 30 April 2010, either calculate new Average costs under Articles 94 and 95 of Regulation (EEC) No 574/72 or use the Average costs presented for year 2009.

III. Procedure for reimbursement on the basis of actual expenditure

1. Claims for reimbursement on the basis of actual expenditure recorded in the accounts of the creditor Member State before 1 May 2010 shall be subject to the financial provisions of Regulation (EEC) No 574/72.

These claims shall be introduced to the liaison body of the debtor Member State no later than 31 December 2011.

2. All claims for reimbursement on the basis of actual expenditure recorded in the accounts of the creditor Member State after 30 April 2010 shall be subject to the new rules of procedures in accordance with the provisions of Articles 66 to 68 of Regulation (EC) No 987/2009.

IV. Procedure for reimbursement on the basis of fixed amounts

1. Average costs regarding years up to and including 2009 shall be presented to the Audit Board no later than 31 December 2011. Average costs regarding year 2010 shall be presented to the Audit Board no later than 31 December 2012.

2. All claims for reimbursement on the basis of fixed amounts published in the *Official Journal of the European Union* before 1 May 2010 shall be introduced no later than 1 May 2011.

3. All claims for reimbursement on the basis of fixed amounts published after 30 April 2010 shall be subject to the new rules of procedures in accordance with the provisions of Articles 66 to 68 of Regulation (EC) No 987/2009.

V. Final provisions

1. When applying the transitional arrangements, the guiding principle shall be good cooperation between institutions, pragmatism and flexibility.

2. 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
