



Memo DMG 08/19

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AA, DLA (CARE) & CA – EFFECT OF RECENT COURT OF APPEAL DECISION REGARDING THE PAST PRESENCE TEST (PPT) AND GSL

INTRODUCTION

- 1 The purpose of this memo is to inform DMs about a recent decision of the CoA¹ which deals with the circumstances in which a claimant is entitled to DLA (care) and AA (and, by implication, CA and PIP within social security coordination with EEA Member States and Switzerland to the UK.

1 [2019] EWCA Civ 272

Background

- 2 The background of this case up to and including the UT decision is set out in DMG memo 16/17. Please see para 7 below for further information.
- 3 The case was heard before the CoA on 07.02.19 with the decision being handed down on 07.03.19.

What the CoA decided

- 4 The CoA confirmed that the link in the GSL should be to the UK not the UK's social security system.
- 5 In addition to the factors set out in DMG para 071786 *et seq* the CoA found that it is equally clear that, in assessing whether such a GSL is established, objective evidence to prove the link is plainly critical but evidence of the motives, intentions and



expectations of the applicant should be taken into account if they are relevant to proof of the link and are convincing.

6 However, as the CoA stated at para 69 of their decision;

“Decision makers and, on appeal, the courts are entitled to be cautious about self-serving statements by applicants, especially if the benefits are claimed immediately on or only shortly after arrival in the UK. Such caution is justified not only because self-serving statements as to motives, intentions and expectations may not be genuine but also because, even if they are genuine, actual realisation of the intentions and expectations of the applicant will not have been tested by the passage of time and the realities of the situation.”

Example 1

BK's mother relocated from Republic of Ireland to the UK, which was her country of nationality, as a result of domestic violence. She stated that; (1) she required the support of her own mother, grandmother and two brothers, all of whom resided in England; (2) she did not believe that she could turn to her father for help in Republic of Ireland as he was a heavy drinker and she did not consider that this was a suitable or safe environment to reside with BK and his two siblings; (3) on coming to England she severed all ties with Republic of Ireland and had had no intention of returning. The latter was evidenced by the fact that she closed her sole bank account in Republic of Ireland in the week preceding her return to England at the end of June, took steps to register her children for school in England in July 2013 and they attended school in England from September the same year. The CoA found that BK had a GSL to the UK.

Example 2

MM decided to move from Germany to the UK to live with her daughter, who is a British citizen. The CoA found as fact that (1) she suffered with several physical ailments including osteoporosis, rheumatoid arthritis, incontinence and high blood pressure, and used a catheter and a wheelchair; (2) she required support with mobility, washing, toilet, cooking meals, dressing and administering medication; (3) she moved to the UK to join her daughter, who was a British citizen and would provide daily care for her. The CoA decided she had a GSL to the UK.

Example 3

Estelle decides to move from France to the UK. She makes a claim for DLA (C) three days after arriving. She states that her intention is to live here permanently so that she can be closer to cousins who already live here. Her cousins will not be providing



her care, whereas in France, her sister assisted with her care. She has not identified care assistance in the UK. She has not yet closed all of her French bank accounts, and still has belongings in a friend's spare room in France. She has opened one current account in the UK, but is staying in a B&B as she has not organised rental of a property to live in. She has not made any claim to any other UK benefit and she has not previously worked or lived in the UK. The DM determines that she does not yet have a GSL to the UK, despite her stated intention to settle here in the long term.

Expansion to memo 16/17

- 7 DMG Memo 16/17 advised DMs to read the DMG as if the phrase “the UK social security system” had been replaced with just “the UK”. This change therefore broadened the factors set out in DMG para 071786 *et seq* which are to be taken into account when considering whether a claimant has a GSL. DMs should consider additional factors such as;

- Whether the claimant has any UK bank accounts (or other financial products)
- Whether they have any UK property (owned or rented)
- Whether they have any other family members in the UK (and frequency of visits to them)
- For “out-goers” – the number of years they have lived and worked in the UK prior to leaving

However, this list is **non-prescriptive and non-exhaustive**; DMs should weigh up any evidence provided to them by the claimant which they state shows a GSL to the UK. For difficult and/or borderline cases DMs can refer the case to DMA Leeds for guidance.

Annotations

Please annotate the number of this memo (DMG 08/19) to the following DMG paragraphs:

071781 and 071786

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such



referrals should be followed, as set out in Memo DMG 04/19 - Requesting case guidance.

DMA Leeds: May 2019