

## THE APPLICATION OF ARTICLE 5 OF REGULATION (EC) NO 883/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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### INTRODUCTION

1. This memo gives guidance on a decision of the Upper Tribunal<sup>1</sup> and the application of Art. 5<sup>2</sup>.

*1 AJ v SSWP CG/1346/2018; 2 Art.5 of Reg (EC) 883/2004*

### BACKGROUND

2. In this case, the claimant wished to make a claim to Carer's Allowance (CA), as she was caring for her mother (the severely disabled person, DP). In order to make a claim to CA, the DP has to be in receipt of a qualifying benefit (see DMG 60033). In this case the claimant's mother was not in receipt of any of these benefits, but was in receipt of a Polish benefit called *dodatek pielęgnacyjny* (medical care supplement). The claimant argued that this benefit was the Polish equivalent of DLA, and that Art. 5 of Reg 883 provided for the acceptance of equivalent benefits. The FtT dismissed the claimant's appeal.
3. The claimant was granted permission to appeal to the UT. In submissions, the Secretary of State conceded that, on the facts of this case, the medical care supplement received by the DP should be treated as equivalent to DLA due to Art. 5 of Reg 883.



## THE APPLICATION OF ARTICLE 5

4. Article 5 of Reg 883/2004 states;

*Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:*

*(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;*

*(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.*

5. The leading case on the application of Article 5 is the CJEU case of *Knauer*<sup>1</sup>.

The CJEU held that:

- 5.1 “equivalent benefits” did not mean the same as “benefits of the same kind” in e.g. Article 53 [28];
- 5.2 two benefits were not equivalent merely because they were both within the scope of 883/2004 [32];
- 5.3 the concept of equivalent benefits meant old-age benefits which were “comparable;” [34] and
- 5.4 when determining comparability, account had to be taken of the aim pursued by the benefits and by the legislation which established them [34].

In that case, the benefits were comparable because the aim of both was to ensure that the recipients maintained a standard of living commensurate which they enjoyed prior to retirement [35-36]. The CJEU added that there was no objective justification for different treatment [37].

*1 C-453/14 Vorarlberger Gebietskrankenkasse and Alfred Knauer v Landeshauptmann von Vorarlberg and Rudolf Mathis*

6. Where DMs receive an application for a benefit (or a benefit component e.g. additional amount for the severely disabled in SPC) which is reliant on the claimant or the DP being in receipt of a qualifying benefit, they should not automatically rule out the claim if the GB qualifying benefit is not in payment. If the claimant or DP is in receipt of a benefit or other income from another MS it may be, dependant on the type of benefit or income, that Art. 5 applies. It



should be noted that Article 5 applies to all benefits that fall within scope of Regulation 883, not just cash sickness benefits. This includes SNCB's.

7. In the case above, there were two payment conditions for the Polish medical care supplement;
- *The claimant was incapable of work and independent living, or*
  - *The claimant has reached the age of 75*

The Secretary of State's concession in the case of *AJ* was based on the fact that the DP was in receipt of medical care supplement due to the first condition, and therefore the award of it (in relation to the independent living clause) was more akin to DLA. If the claimant had been in receipt due to the second condition, the position of the Secretary of State was that it would not have been akin to DLA.

8. Where a claimant claims that either they or the DP is in receipt of an equivalent qualifying benefit from another member state then the case should be forwarded to DMA Leeds, for consideration of whether the benefit does fall within Art. 5 or not.

## ANNOTATIONS

Please annotate the number of this memo (02/20) against DMG paragraphs:

23046, 44076, 60033, 78030, 78105.

## CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E Zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo DMG [4/19](#) Requesting case guidance from DMA Leeds for all benefits.

**DMA Leeds: January 2020**

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