

## TEMPORARY ABSENCE ABROAD FOR CASH SICKNESS BENEFITS

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### INTRODUCTION

- 1- The purpose of this memo is to provide guidance on the UT case of KC v SSWP, and how the temporary absence rules for cash sickness benefits should be applied.

### BACKGROUND

2. Where a claimant goes abroad in an EEA member state the DM must decide whether domestic legislation<sup>1</sup> or a relevant EU regulation applies<sup>2</sup>.

*1 SS (PIP) Regs, Regs 17 & 18; 2 Reg (EC) 883 2004*

### KC V SSWP

3. The claimant, a British citizen, left Britain for the Czech Republic. Her absence was solely in connection with arrangements for medical treatment. The treatment was supervised by appropriately qualified doctors in the Czech Republic. Her intention at the outset was to return to GB within 52 weeks. She remained habitually resident in the UK. Although the claimant claimed whilst she was in the Czech Republic as she was still habitually resident in GB this wasn't a first claim from abroad.



4. At the UT Judge Ward decided that as the claimant was habitually resident in the UK and hadn't switched her habitual residence then she was therefore subject to domestic legislation. The claimant's temporary absence was for 26 weeks, and they had intended to return within 52 weeks. The claimant was entitled to both components for the remainder of the temporary absence but not beyond that period.

#### **Example 1**

Andrew who was in receipt of both components of PIP decided to visit his family in Germany. He intended to return within 13 weeks however he decided to extend his visit. As Andrew's period in Germany was intended to be less than 52 weeks his absence was temporary. He therefore remained entitled to both components of PIP for the first 13 weeks only. After 13 weeks his claim was disallowed because he was not present in Great Britain.

#### **Example 2**

Beverly who was in receipt of both components of PIP decided to move to Spain for the warmer climate. She was in receipt of a pension from GB. As she was in receipt of a pension, the fact that she has switched her place of residence to Spain does not stop the UK being competent to pay PIP, as Reg (EC) 833 applies. She was entitled to export the daily living component of PIP but immediately lost entitlement to the mobility component when she moved to Spain.

#### **Example 3**

Dave and his wife travel to Spain for 8 weeks. Dave's wife is entitled to both components of PIP. Whilst in Spain Dave commences work for a construction company the intention is still to return in 8 weeks. Dave and his wife haven't switched their habitual residence to Spain they are subject to domestic legislation as Reg (EC) 883 does not apply. Dave's wife remains entitled to both components for the 8 week period.

#### **Example 4**

Bill receives Carer's Allowance for looking after his wife, Mary who is in receipt of Attendance Allowance. Bill contacts the Carer's Allowance Unit to report the fact that he and his wife will be taking an extended holiday in Portugal where they have a holiday home. They will be away from the UK for 10 weeks. As long as Attendance Allowance remains in payment for this period, entitlement to Carer's Allowance will not be affected.



### **Example 5**

Bill later contacts the Carer's Allowance Unit to report that he and his wife will be extending their stay in Portugal indefinitely. They will be returning home, within 52 weeks, but cannot say at this stage exactly when that will be. As entitlement to Attendance Allowance ended after 13 weeks, the award of Carer's Allowance was superseded and disallowed because there was no longer a qualifying benefit in payment to Mary.

### **ANNOTATIONS**

Please annotate the number of this Memo (ADM Memo 09/20) against the following ADM paragraph

C2056

### **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 [4/19](#) Requesting case guidance from DMA Leeds for all benefits.

DMA Leeds: June 2020