

SUMMARY

ECJ 11 April 2024, case C-116/23 (Sozialministeriumservice), Social insurance

XXXX – v – Sozialministeriumservice, Austrian case

Summary

A care leave allowance comes within the concept of ‘cash benefits’. The allowance cannot be subject to the condition that the person in need of care be in receipt of a care allowance of a certain level pursuant to the legislation of that Member State, unless that condition is objectively justified.

Questions

Must the concept of ‘sickness benefits’ within the meaning of Article 3(1)(a) of Regulation No 883/2004 be interpreted as covering a care leave allowance paid to an employee who provides assistance to or cares for a close relative in receipt of a care allowance in another Member State and who is on unpaid leave on that basis?

Must Article 45(2) TFEU, Article 4 of Regulation No 883/2004 and by Article 7(2) of Regulation No 492/2011 be interpreted as precluding legislation of a Member State under which the grant of a care leave allowance is subject to the condition that the person in need of care be in receipt of a care allowance of a certain level pursuant to the legislation of that Member State?

Must Article 4 of Regulation No 883/2004 be interpreted as precluding national legislation or case-law that, first, makes the grant of a care leave allowance and that of a family hospice leave allowance subject to different conditions and, second, does not allow an application for care leave to be reclassified as an application for family hospice leave?

Ruling

Article 3(1)(a) of Regulation No 883/2004 must be interpreted as meaning that the concept of ‘sickness benefits’, within the meaning of that provision, covers a care leave allowance paid to an employee who provides assistance to or cares for a close relative in receipt of a care allowance in another Member State and who is on unpaid leave on that basis. Consequently, such an allowance comes also within the concept of ‘cash benefits’, within the meaning of that regulation.

Article 45(2) TFEU, Article 4 of Regulation No 883/2004 and by Article 7(2) of Regulation No 492/2011 must be interpreted as precluding legislation of a Member State under which the grant of a care leave allowance is subject to the condition that the person in need of care be in receipt of a care allowance of a certain level pursuant to the legislation of that Member State, unless that condition is objectively justified by a legitimate aim relating, in particular, to maintaining the financial balance of the national social security scheme, and is a proportionate means of achieving that aim.

Article 4 of Regulation No 883/2004 must be interpreted as not precluding national legislation or case-law that, first, makes the grant of a care leave allowance and that of a family hospice leave allowance subject to different conditions and, second, does not allow an application for care leave to be reclassified as an application for family hospice leave.

Creator: European Court of Justice (ECJ)

Verdict at: 2024-04-11

Case number: C-116/23