DECISION No 163

of 31 May 1996

concerning the interpretation of Article 22 (1) (A) of Regulation (EEC) No 1408/71 in respect of persons undergoing dialysis or oxygen therapy

(96/555/EC)

THE ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES ON SOCIAL SECURITY FOR MIGRANT WORKERS,

Having regard to Article 81 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, which requires the Administrative Commission to deal with all administrative questions and questions of interpretation arising from the provisions of Regulation (EEC) No 1408/71 and subsequent regulations,

Having regard to Article 22 (1) (a) of Regulation (EEC) No 1408/71, which refers to persons whose condition necessitates immediate sickness benefits during a stay in the territory of another Member State,

Whereas it is necessary to avoid any abuse of the provisions of Article 22 (1) (a) by persons who move temporarily to the territory of another Member State to obtain benefits in kind under this subparagraph without complying with the procedure laid down in subparagraph (c) of the same Article, which makes the granting of such benefits subject to prior authorization by the competent institution;

Whereas an over-restrictive interpretation of Article 22 (1) (a) would cause a significant obstacle to freedom of movement for persons whose condition necessitates continuous and regular medical treatment such that they will be likely to require immediate benefits in the event of a stay in the territory of another Member State;

Whereas, therefore, it is necessary to clarify the interpretation of Article 22 (1) (a) in order to specify that it also covers persons undergoing kidney dialysis or oxygen therapy who travel to the territory of another Member State and whose condition necessitates immediate benefits as part of ongoing treatment, notwithstanding the practical obligation to make a prior arrangement for the granting of these benefits during the stay, and in as far as the stay is for reasons other than medical reasons;

Acting in accordance with the conditions laid down in Article 80 (3) of Regulation (EEC) No 1408/71,

HAS DECIDED AS FOLLOWS:

1. Kidney dialysis or oxygen therapy provided in a Member State other than the competent Member State for a person entitled to invoke the provisions of Article 22 (1) (a) of Regulation (EEC) No 1408/71 or for a member of his or her family shall be regarded as being an immediate benefit within the meaning of the aforementioned provision if it is part of existing and ongoing dialysis or oxygen therapy, and in as far as the stay is for reasons other than medical reasons.

2. The provisions of the previous paragraph shall apply without prejudice to the practical obligation on the person concerned to make a prior arrangement with a view to ensuring the effective availability of the treatment in question during a temporary stay in the Member State.

3. This Decision, which replaces Decision No 123 of 24 February 1984, will be published in the *Official Journal of the European Communities*. It is applicable from the first day of the month following publication.

G. MICCIO

Chairman of the Administrative Commission