DECISION No 175

of 23 June 1999

on interpretation of the concept of 'benefits in kind' in the event of sickness or maternity pursuant to Article 19(1) and (2), Article 22, Article 22a, Article 22b, Article 25(1), (3) and (4), Article 26, Article 28(1), Article 28a, Article 29, Article 31, Article 34a and Article 34b of Council Regulation (EEC) No 1408/71 and on calculation of the amounts to be refunded under Articles 93, 94 and 95 of Regulation (EEC) No 574/72 as well as the advances to be paid pursuant to Article 102(4) of the same Regulation

(2000/142/EC)

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

Having regard to Article 81(a) 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 [1], under which it is made responsible for dealing with all administrative matters and questions of interpretation arising from Regulation (EEC) No 1408/71 and subsequent regulations,

Having regard to Article 36(2) of Regulation (EEC) No 1408/71,

Whereas Decision No 109 of 18 November 1977 needs to be revised to take account of the remarks of the Court of Justice of the European Communities in its judgment of 5 March 1998 in case C-160/96 (Molenaar) to the effect that:

— care insurance benefits in kind are intended to supplement sickness insurance benefits in order to improve the state of health and quality of life of persons reliant on care; they must therefore be regarded as 'sickness benefits' within the meaning of Article 4(1)(a) and (b) of Regulation (EEC) No 1408/71,

— care insurance benefits in kind partly consist of the direct payment or reimbursement of expenses incurred as a result of the insured person's reliance on care, in particular medical expenses entailed by that condition. Such benefits in kind, which are designed to cover care received by the person concerned (both in the home and in specialised centres), purchases of equipment and work carried out, fall within the concept of 'benefits in kind' within the meaning of the relevant Articles of Chapter 1 of Title III of Regulation (EEC) No 1408/71,

— home help in accordance with German health insurance legislation should be considered as sickness benefits in kind;

Whereas, for the purposes of application of Article 19(1) and (2), Article 22, Article 22a, Article 22b, Article 25(1), (3) and (4), Article 26, Article 28(1), Article 28a, Article 29, Article 31, Article 34a and Article 34b of Regulation (EEC) No 1408/71, a precise meaning, binding on all Member States, should be attached to the concept of sickness and maternity 'benefits in kind';

Whereas the concept of sickness and maternity benefits in kind must therefore include care insurance benefits, in so far as they meet the objective criteria applied by the Court of Justice, regardless of their classification according to the national legislation under which they are provided;

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

HAS DECIDED AS FOLLOWS:

1. The sickness and maternity benefits in kind to be considered when calculating the refunds referred to in Articles 93, 94 and 95 of Council Regulation (EEC) No 574/72 [2] shall be those regarded as benefits in kind under the national legislation administered by the institution which has provided the benefits in so far as they can be acquired in accordance with the provisions of Article 19(1) and (2), Article 22, Article 22a, Article 22b, Article 25(1), (3) and (4), Article 26, Article 28(1), Article 28a, Article 29, Article 31, Article 34a and Article 34b of Regulation (EEC) No 1408/71.

[1] OJ L 149, 5.7.1971, p. 2.
[2] OJ L 74, 27.3.1972, p. 1.

2. The following shall also be regarded as benefits in kind within the meaning of the above-mentioned Articles of Regulation (EEC) No 1408/71:

   (a) care insurance benefits in kind giving entitlement to full or partial direct payment of certain expenditure entailed by the insured person's reliance on care and incurred for his or her direct benefit, for example nursing care and home help provided in the home or in specialised establishments, purchases of care equipment, or work carried out to improve the home environment; benefits of this kind are essentially intended to supplement sickness insurance benefits in kind in order to improve the state of health and the quality of life of persons reliant on care;

   (b) benefits in kind not arising from care insurance but having the same characteristics and purposes as those referred to in (a) above, in so far as they may be regarded as social security benefits in kind within the meaning of Regulation (EEC) No 1408/71 and may be acquired in the same way as those referred to in (a) in accordance with the provisions of the above-mentioned Articles of Regulation (EEC) No 1408/71.

   The benefits in kind referred to in (a) and (b) shall be included in the expenditure referred to in 1 above.

3. Administration costs, costs of administrative and medical check-ups and the person concerned's own contributions shall be disregarded when calculating the refunds referred to in Articles 93, 94 and 95 of Regulation (EEC) No 574/72.

4. For the calculation of the average costs mentioned in Articles 94 and 95 of Regulation (EEC) No 574/72, the additional sickness and maternity benefits specified in the statutes or rules or procedures of the institutions shall be included in the total annual expenditure on sickness benefits in kind.

5. Expenditure on medical research and subsidies to institutions of preventive medicine, granted for general health protection measures not sponsored by the social security institutions, as well as expenditure on measures of a general (not risk-related) nature shall not be included in the total annual expenditure on sickness and maternity benefits in kind.

6. The amounts refunded to other Member States in accordance with the regulations or bilateral or multilateral agreements shall not be taken into consideration in calculating average costs.

7. The calculation of the amounts to be refunded shall as far as possible be based on the official statistics and accounts of the place of stay or residence, and preferably on the published official data. The sources of the statistics used shall be indicated.

8. The amount of the advances to be paid under Article 102(4) of Regulation (EEC) No 574/72 shall be calculated by multiplying the last approved average cost by the last known number of persons concerned, as obtained from the data established by the institutions responsible for the lists.

9. This Decision shall enter into force on the first day of the month following its publication in the *Official Journal of the European Communities*. It shall replace Decision No 109 of 18 November 1977.

The Chairman
of the Administrative Commission
Arno BOKELOH