HI

I was hoping someone might be able to give me some advice on challenging a decision relating to income paid from abroad. The benefit in question is a type of 'attendance allowance' "accompangnamento". This is paid to the Father of a young person (aged 17 -almost 18) who is still in education. Parents receive CB and CTC for this YP - but I have just noticed no disability element. (will check this out separately) The family are from Italy and Father is working.

Dad is in receipt of HB but seems did not declare the income from abroad. I am told, that this is a disregarded income in Italy and so they didn't think they had to declare it. This has now been done , and has resulted in a considerable overpayment as the LA are treating it as income but not giving a disabled child element. One of the reasons cited for this decision is that they believe this benefit is being paid fraudulently. We are told that the benefit is paid into a post office in Italy, and that the family can only access this when visiting Italy.

I have checked out as much as I am able, relating to what type of benefit this is and I have copied below an extract from a guide to EU benefits:

" Chapter XII: Long-term care

When are you entitled to long-term care? Benefits covering the risk of long-term care are provided under both the social security and the social welfare system. The former are contribution-based and have been dealt with in the part on invalidity benefits. The latter are welfare-based and provided, in the form of both benefits in kind and cash benefits (constant attendance monthly allowance), to disabled citizens who are not self sufficient regardless of the fact that they have already been granted an invalidity allowance or an incapacity pension.

Beneficiaries have to meet the following qualifying conditions:  to be incapable of walking without the constant assistance of an attendant or carer;  to be in need of constant attendance in order to perform daily life activities/functions. Entitlement is subject to the assessment of the level of dependency carried out by a forensic medical “mixed” board (made up of forensic doctors from both the local health centre and the INPS) that can also require follow-up checks and it is not subject to means-testing.

What is covered? The constant attendance allowance for persons with disabilities is € 499.27 (€ 481.57 for recipients of the incapacity pension; € 846.16 for totally blind people).Claims for long-term care cash benefits are to be submitted by either the disabled person him/herself or by a relative. They are granted in the form of attendance allowances. "

The benefit is not taxable, not means tested and appears to work like DLA/PIP. Looking at the qualifying conditions, it is stated that in order to claim, the person must be resident in Italy. I cannot find any information on temporary absence or payment abroad. I have spoken to the family who say they do not know if they are staying in UK permanently and that they have notified Italian authorities and can receive payment of the benefit for 52 weeks (which will be the end of this month). This may also relate to the fact that YP will be 18 shortly. English isn't brilliant but is quite good so not sure if there is a bit of confusion about this issue.

My thoughts are thus:

1. under the EEA co-ordination rules isn't it possible that in fact this benefit can be paid abroad until Italy is no longer the competent state? but would Italy still be the comp state if Father (of whom YP is a dependant family member) is working in UK? The Italian benefit is more than PIP (though not by a massive amount).

2. the LA are wrong to refuse to disregard the benefit on the basis that the family 'may' be receiving this fraudulently - surely that is a question for the Italian authorities.

3. If this is indeed a disability type benefit similar to DLA/PIP - notwithstanding the fact that it may be being paid incorrectly, shouldn't this benefit be disregarded in the same way (to prevent any unequal treatment as per the treaty rules)?

4. If it is correct that they treat it as income, this is a child's income (paid to parent on her behalf) so it is possible that this could be disregarded under this rule?