

MA should not be withdrawn from a worker simply because s/he goes to live in another member state. Ret

RFMH/SH/6

Commissioner's File: CM/108/1986

SOCIAL SECURITY ACTS 1975 TO 1990

CLAIM FOR MOBILITY ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Roger Stanton Newton

Appeal Tribunal: Norwich

Case No: 40/12/01

1. My decision is that the decision of the insurance officer (now adjudication officer) awarding mobility allowance to the claimant for the inclusive period from 4 March 1981 to 21 August 2023 shall be reviewed but not revised for the inclusive period from 4 April 1984 to 21 August 2023 because, by virtue of Article 10 of Regulation (EEC) 1408/71, the claimant continues to be entitled to mobility allowance so long as he resides in one of the Member States and there is no relevant change of circumstances.

2. The claimant suffered severe injuries as a result of a car accident on 12 December 1980. He claimed and was awarded mobility allowance from 4 March 1981 to 21 August 2023. On 6 April 1984 a letter was received from the claimant's mother advising that he was living in France. The adjudication officer reviewed his original decision awarding mobility allowance for the inclusive period from 4 March 1981 to 21 August 2023 on the ground that there had been a relevant change of circumstances since the decision was given. His revised decision, so far as relevant to the present appeal, was to the effect that mobility allowance was not payable from and including 29 September 1983 because the claimant was not ordinarily resident in Great Britain as required by section 37A of the Social Security Act 1975 and regulation 2(1)(a) of the Mobility Allowance Regulations 1975.

3. By an interim decision dated 23 October 1989 I decided that the adjudication officer's original decision awarding mobility allowance to the claimant for the inclusive period from 4 March 1981 to 21 August 2023 should not be reviewed and revised for the inclusive period from 29 September 1983 to 3 April 1984 because the claimant was ordinarily resident in Great Britain during that period. However, before deciding the question whether the said adjudication officer's original decision should be reviewed and revised from and including 4 April 1984, the date

when the claimant ceased to be ordinarily resident in Great Britain, I referred to the Court of Justice of the European Communities the following questions for determination:-

"In the case of an employed or self-employed person who has acquired under United Kingdom legislation alone, a right to mobility allowance under section 37A of the Social Security Act 1975 but who is not entitled to any other benefit under United Kingdom legislation;

- (a) is mobility allowance a benefit within the scope of Article 4(1)(b) of Council Regulation (EEC) 1408/71 without being excluded under Article 4(4); and
- (b) if so, may that person continue to receive mobility allowance by virtue of Article 10 of Council Regulation (EEC) 1408/71 while residing in another Member State?"

4. In answer to my first question the European Court of Justice replied:-

"... that in the case of persons who are or have been subject as employed or self-employed persons to the legislation of a Member State, an allowance provided for under the legislation of that Member State which is granted on the basis of objective criteria to persons suffering from physical disablement affecting their mobility and to the grant of which the persons concerned have a legally protected right must be treated as an invalidity benefit within the meaning of Article 4(1)(b) of Regulation No. 1408/71."

In answer to my second question, the European Court of Justice replied:-

"... that where an allowance for handicapped persons constitutes an invalidity benefit within the meaning of Article 4(1)(b) of Regulation No. 1408/71, Article 10 of that regulation precludes the withdrawal of that benefit on the sole ground that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated."

It is accepted that the claimant, because of his past employment in the United Kingdom, is an employed or self-employed person for the purposes of Article 2 of regulation 1408/71.

5. Section 104(1)(a) of the Social Security Act 1975 provides that any decision of an adjudication officer a social security appeal tribunal or a Commissioner may be reviewed at any time by an adjudication officer if, on a reference by an adjudication officer, by a social security appeal tribunal if there has been any relevant change of circumstances since the decision was given. In the present case a letter was received on 6 April 1984

from the claimant's mother advising that he was living in France. That constituted a change of circumstances and the adjudication officer rightly reviewed his original decision. However, in the light of the replies given by the European Court of Justice to the questions referred to them by me, the adjudication officer's original decision does not fall to be revised so long as the claimant resides in one of the Member States and there is no relevant change of circumstances.

6. The claimant's appeal is allowed.

(Signed) R.F.M. Heggs  
Commissioner

(Date) 1 November 1991