



Judgment of the Court (Seventh Chamber) of 11 April 2024 (request for a preliminary ruling from the Bundesverwaltungsgericht – Austria) – XXXX

(Case C-116/23, ⁽¹⁾ Sozialministeriumservice)

(Reference for a preliminary ruling – Social security – Migrant workers – Family benefits – Regulation (EC) No 883/2004 – Article 3 – Sickness benefits – Scope – Care leave allowance – National of a Member State residing and working in another Member State and caring for a family member in the first Member State – Ancillary nature in respect of the care allowance – Article 4 – Equality of treatment)

(C/2024/3286)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: XXXX

Interested party: Sozialministeriumservice

Operative part of the judgment

1. Article 3(1)(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems
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.
2. Article 45(2) TFEU, Article 4 of Regulation No 883/2004 and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union
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.
3. 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.

⁽¹⁾ OJ C 223, 26.6.2023.