Federal Social Court

Judgment of 4 June 2019 - B 3 KR 23/18 R

1. The health insurance fund must grant the consent for the overseas stay of an insured person who is incapable of working in a member state of the EU for the continued payment of the sickness benefit if there are no doubts about his incapacity to work and there is no abuse of benefits.

2. The lack of participation in a medical examination or in curative treatment may only be sanctioned after a written notice to the insured who is incapable of working.

Disputed is the payment of sickness benefit during a stay in a member state of the European Union.

The Plaintiff is insured at the sued health insurance fund, which paid him sickness benefit from 29 July 2014. The incapacity to work of the Plaintiff due to illness owing to a spinal shoulder syndrome was certified by a doctor with consecutive certificates without interruption until 29 September 2014. On 2 September 2014 he notified the Defendant that during the time from 8 September until 12 September 2014 he would be going on holiday to stay in a holiday home in Denmark (Sydals). Whereas the attending doctor had no objections to a short holiday, the medical service of the health insurance funds had misgivings about the long outward and return journey by car and the thus associated forced posture of the spine, which could lead to a worsening and an extension of the Plaintiff's incapacity to work. Therefore, the Defendant rejected the consent for the overseas stay and ordered the sickness benefit claim to be suspended during the holiday. The social court dismissed the action. The State Social Court revoked the judgement of the social court and the contested notification because the claim for sickness benefit was not suspended during the stay overseas. The Plaintiff must not be prevented from claiming a service within the European Union. In any case he was entitled to the granting of the consent to the stay overseas.

The Federal Social Court dismissed the appeal of the sued health insurance fund: The State Social Court ultimately rightly decided that the Plaintiff was also entitled to sickness benefit during his holiday in Denmark. The Defendant was not allowed to refuse consent to the stay overseas. The granting of the consent was not at the discretion of the Defendant. The European regulation regarding the export of cash benefits (Article 21 Regulation <EC> 883/2004) applies to the claim for sickness benefit during a stay overseas in a member state of the European Union. According to this regulation insured, who stay in another state than the responsible member state, are entitled to monetary benefits, which are provided by the responsible funding body according to the legal regulations that are applicable for him. Accordingly, the payment claim for sickness benefit here is oriented towards the national health insurance law (Fifth Book of the German Social Insurance Code [Fünftes Buch Sozialgesetzbuch - SGB V]), the prerequisites of which were determined binding by the State Social Court owing to incapacity to work without interruption during the entire disputed period of time that was certified by a doctor. The principal ordered suspension of benefits according to Section 16 Para. 1 Sentence 1 Number 1 SGB V during a stay overseas was not applied

in this case. The Defendant had to grant the consent requested by the Plaintiff for the stay overseas according to Section 16 Para. 4 SGB V. The purpose of the requirement for the consent of the health insurance fund to the stay overseas after occurrence of the incapacity to work is the administrative examination of the statutory prerequisites for the sickness benefit claim and serves to prevent benefit abuse. The same aim is pursued by the European procedural regulations in case of monetary benefits owing to incapacity to work with a stay in another state than the responsible member state (compare Article 27 Para. 6 the following Regulation <EC> 987/2009). However, if the prerequisites for a sickness benefit claim undoubtedly exist there are no legal points of reference for discretionary considerations that can only be examined by a court to a limited extent, which could oppose the consent.

Insofar as the Defendant expressed misgivings about the holiday from the point of view of the economic efficiency requirement (Section 12 Para. 1 SGB V) because of the worsening of the health condition and the possible extension of the incapacity to work, it did not draw any legal consequences from this. According to the findings of the State Social Court it did not request the Plaintiff to carry out corresponding acts of assistance, for example to participate in a medical examination or curative treatment. If, as here, an impairment to performance due to own fault cannot be taken into consideration, the insured person who is incapable of working - irrespective of the destination of the trip - is only responsible for the obligations to provide assistance that are standardised by law, which may be sanctioned after a corresponding notification (compare Section 66 Para. 1 to 3 First Book of the German Social Insurance Code [Erstes Buch Sozialgesetzbuch - SGB I]; similar to Article 27 Para. 4 Sentence 2 and Para. 6 Regulation <EC> 987/2009). The Federal Social Court was able to leave undetermined whether the refusal of consent violated the freedom to provide services anchored in primary law (Article 56 Treaty on the Functioning of the European Union <TFEU>) respectively, the free movement of persons from the Union citizenship (Articles 20, 21 TFEU).