



## Afdeling Bestuursrechtspraak van de Raad van State [Administrative Jurisdiction of the Council of State], 11 October 2006, nr200600633/1, LJN:AY9897

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**Country:** Netherlands

**Region:** Europe

**Year:** 2006

**Court:** Afdeling bestuursrechtspraak van de Raad van State (Administrative Jurisdiction Department of the Council of State)

**Health Topics:** Child and adolescent health, Health care and health services, Health systems and financing, Medicines, Public safety, Sexual and reproductive health

### Facts

According to the Benefit Entitlement Act (â€œBEAâ€•), health care providers who offer medically necessary care to illegal immigrants must be compensated for their expenses. To achieve this, the BEA increased the budget of the Ministry of Health, Welfare and Sports (â€œthe Ministryâ€•). Instead of managing the compensation fund itself, the Ministry appointed the Foundation Koppeling (â€œthe Appellantâ€•) to manage and administer the compensation fund. A health care institution requesting compensation must submit an application form to the Appellant, and if the form satisfies the requirements set forth by both the Benefit Entitlement Act and the Appellant (which has the discretion to establish additional requirements), then the Appellant will approve either whole or partial compensation for the applicantâ€™s expenses. The Appellant will calculate the total sum of approved awards and request a subsidy for that amount from the Ministry. The Ministry will grant the subsidy to the Appellant, which will then distribute the awards to the health care providers.

The Appellant received a compensation application from BAVO RNO Groep (â€œthe Applicantâ€•) for medical expenses incurred in 2002 and issued an award to the Applicant. The Appellant noted that any requests for additional compensation would not be granted. The Applicant objected to this provision, and the Appellant argued that since it is not an administrative authority, no objections can be filed against it. The District Court of Rotterdam ruled that the Applicant could in fact object to the Appellantâ€™s decisions. The Appellant appealed.

### Decision and Reasoning

The Court found that the Appellant is an administrative authority acting on behalf of the government, and therefore compensation applicants can object to the Appellantâ€™s awards decisions.

According to Article 1:1 sub 1 of the General Administrative Law Act (â€œGALAâ€•), any entity that is either governed by public law or is vested with public authority is considered an administrative authority. The Court found that through the BEA, the Government had voluntarily undertaken the responsibility of compensating health care providers who offered medically necessary care to illegal immigrants. The Government allotted a portion of the budget to the Ministry, which in turn created a separate compensation fund to be managed by the Appellant. Based on this set up, the Council of State found that the Appellant:

(1) Relies on funding from the Government budget to carry out its compensation responsibilities

(2) Facilitates the Governmentâ€™s task of compensating health care providers who offer medically necessary care to illegal immigrants.

These two characteristics classify the Appellant as an entity vested with â€œpublic authority.â€• The fact that the Foundation can impose extra conditions does not change this. Therefore the Appellant can be considered an administrative authority whose decisions can be appealed.

### Decision Excerpts

â€œWel van belang is dat, zoals uit voormelde wetsgeschiedenis kan worden afgeleid, de overheid het treffen van bovenbedoelde voorziening als haar taak heeft opgevat en daartoe door appellant een fonds heeft laten oprichten.

Gelet hierop, en op de nauwe (financiële) betrokkenheid tussen de stichting en de minister, zoals omschreven in r.o. 2.3.5. en 2.3.6., alsmede op de omstandigheid dat de door de minister geformuleerde voorwaarden/criteria volledig verdisconteerd zijn in de regeling, zoals onder 2.1. tot en met 2.1.5. is weergegeven, moet worden geoordeeld dat de stichting bij de toekenning van bijdragen op grond van het reglement openbaar gezag uitoefent in de zin van art. 1:1 lid 1 aanhef en onder b Awb. Dat de stichting in de regeling nadere voorwaarden kan stellen aan de toekenning van bijdragen, doet hieraan niet af. Niet is gebleken of aannemelijk gemaakt dat de stichting de vrijheid heeft om de beschikbaar gestelde middelen te besteden voor het doen van andere uitkeringen dan die waartoe het Koppelingsfonds is ingesteld.

Nu de uitvoering van het reglement, zoals de rechtbank terecht heeft overwogen, in het onderhavige geval neerkomt op de uitoefening van een overheidstaak die in dat reglement nader is bepaald, draagt het besluit omtrent de vaststelling van de bijdrage het karakter van een publiekrechtelijke rechtshandeling in de zin van art. 1:3 lid 1 Awb.

Uit het vorengaande volgt dat de beslissing waarbij de stichting de financiële bijdrage heeft vastgesteld, dient te worden aangemerkt als een besluit, waartegen belanghebbenden ingevolge art. 8:1 lid 1 Awb gelezen in samenhang met art. 7:1 lid 1 Awb bezwaar konden maken. Het oordeel van de rechtbank is juist. (Para 2.3.7)

“[T]he Government has committed to the task of providing the above mentioned service and to this end ordered the Appellant to establish a fund.

Taking this into account, and the close (financial) relationship between the Foundation and the Minister as described in par. 2.3.5 and 2.3.6., as well as the fact that the conditions as formulated by the Minister are fully discounted in the Regulation, as enshrined in par. 2.1 until 2.1.5., it should be concluded that the Foundation is exercising public authority when it grants contributions based on the Regulation. The fact that the Foundation can stipulate further terms in relation to the award of funds, does not affect the previous conclusion. It has not been proven nor has a reasonable case been made that the Foundation has the liberty to spend the means at its disposal so as to make other payments other than for which the Benefit Entitlement Fund is established.

Since the execution of the regulation, as considered by the Court, in the present situation this amounts to exercising a task of Government and as stipulated in detail in that Regulation, the decision concerning the assessment of the contribution bears the characteristics of a public-law juridical act in the sense of Article 1:3 sub 1 of the GALA. It follows from the above mentioned that the decision in which the Foundation established the financial contribution, should be regarded as a decision, which interested parties can appeal to in accordance with Article 8:1 read in conjunction with art. 7:1 sub 1 of the GALA. The judgment of the district Court was therefore correct. (Para 2.3.7)