

JUDGMENT

Of the Voivodeship Administrative Court in Warsaw

Of 10 June 2008

Case file no. VII SA/Wa 424/08

CONCLUDING PART OF THE JUDGMENT

The Voivodeship Administrative Court sitting in the panel:

Halina Kuśmirek – Presiding Judge

Krystyna Tomaszewska – Judge of the Voivodeship Administrative Court, Judge Rapporteur

Bogusław Cieśla - Judge of the Voivodeship Administrative Court

Reporting clerk: Joanna Piątek

Upon hearing, on June 10, 2008, the complaint brought to the court by K.W. against the decision of the President of the National Health Fund of [...] January 2008, case file no. [...] to discontinue the proceedings regarding an application for medical treatment, dismisses the complaint.

STATEMENT OF REASONS

The President of the National Health Fund, upon examination of an application of the minor K.W, represented by his mother, M.N., for medical treatment or diagnostic tests abroad, discontinued the proceedings regarding the application, by a decision of [...] January 2008, no. [...] issued pursuant to Art. 105 § 1 of the Code of Administrative Proceedings read in conjunction with Art. 25(2) of the Act of 27 August 2004 on Publicly Funded Healthcare Benefits (*Dziennik Ustaw* no. 210, item 2135 as amended) and with § 8(1) of the Regulation of the Minister of Health of 27 December 2007 on an application for medical treatment or diagnostic tests abroad and reimbursement of costs of transportation (*Dziennik Ustaw* no. 249, item 1867).

In his statement of reasons, the President stated that M.N.' s application for the second stage of the surgery for her son, K.W's, congenital heart defect to be conducted at the University Hospital in M. filed with [...] Branch of the Voivodeship National Health Fund on [...] August 2007.

Based on a written notification received from the University Hospital in M., the President of the National Health Fund established that on [...] August 2007, patient K.W. was admitted to the hospital and on the following day he underwent the requested treatment.

Besides the written notification confirming the performance of the requested surgery, the University Hospital in M. also sent a copy of an invoice dated [...] September for the treatment performed on [...] August.

In the opinion of the President of the National Health Fund, “since the applicant underwent treatment prior to receiving the decision of the President of the National Health Fund, it rendered non-existent the factual circumstances which, under the norms of substantive law (Art. 25(2) of the Act of 27 August 2004, § 8(1) of the Regulation of the Minister of Health of 27 December 2007 on an application for abroad medical treatment or diagnostic tests abroad and reimbursement of costs of transportation) gave rise to the duty of the President of the Fund to issue a decision on the substantial content of the party's application. Therefore, there is no relation under administrative law between the President of the Fund and the applicant, which renders the proceedings irrelevant”.

At the same time, the President of the National Health Fund emphasized that the requested treatment could have been provided in Poland, which is reflected by written statements produced by Polish Teaching Hospitals for Paediatric Cardiac Surgery, which confirmed their readiness to perform the surgery within the necessary time frame.

In the opinion of the President of the National Health Fund, "the applicant, by making the decision to send her son, K.W., for surgery abroad on [...] August 2007, accepted that the President of the National Health Fund would not be able to issue the decision by the said date".

The complaint was filed by M.N. with the Voivodeship Administrative Court in Warsaw.

In the opinion of the complainant, "provision of Art. 25(2) of the Act does not introduce an absolute requirement that the President of the Fund grant his consent prior to conducting treatment".

In the opinion of the complainant, granting consent after the treatment has been conducted could be considered as a basis for the reimbursement of costs incurred by the insured person or for financing the treatment by the Fund in the event where these costs have not been covered by the insured person.

The complainant claims that "regarding the factual circumstances, the authority should issue a decision on the substantial content of the application, confirming my right to conduct treatment abroad at the cost of the Fund. Therefore, it would not be granting consent for future treatment, but rather accepting a form of complete treatment provided for by the law".

In response to the complaint, the President of the National Health Fund upheld his position, requesting that the complaint be dismissed.

The Voivodeship Administrative Court considered the following:

The complaint is not justified and is subject to dismissal, as the appealed decision does not violate the provisions of the applicable substantive and procedural law.

The court does not concur with the complainant's charge that "the provision of Art. 25(2) of the Act does not introduce an absolute requirement that the President of the Fund grant his prior consent for conducting treatment".

Such requirement clearly follows from the wording of Art. 25 of the Act of 27 August 2007 on Publicly Funded Healthcare Benefits (*Dziennik Ustaw* No.210, item 2135 as amended).

Pursuant to Art. 25(1) of the Act quoted hereinabove, the National Health Fund shall not finance medical treatment or medical tests abroad of an insured person with the exception of the costs of healthcare benefits to which the insured person is entitled pursuant to the provisions on coordination.

Art. 25(2) stipulates that "The President of the National Health Fund grants to the insured person, upon his or her request or the request of his or her statutory representative or of his or her spouse, hereinafter referred to as «entitled party», the consent to conduct medical treatment or diagnostic tests in the case referred to in Art. 22(2) of the Regulation (EEC) No. 1408/71 of the Council."

The procedure for filing and examination of the application for medical treatment or diagnostic tests abroad, provided for in paragraph 2, has been specified in the Regulation of the Minister of Health of 22 December 2004, effective until 31 December 2007, on the application to the President of the National Health Fund for medical treatment or diagnostic tests abroad (*Dziennik Ustaw* No.279, item 2769 as amended) effective as of 31 December 2007, and in the Regulation of the Minister of Health of 27 December 2007 on the application for medical treatment and diagnostic tests abroad and the reimbursement of costs of transportation (*Dziennik Ustaw* no.249, item 1867).

The regulation referred to hereinabove specifies the procedure for referring patients for planned medical treatment abroad exclusively prior to conducting the treatment.

The President of the National Health Fund is correct in stating that the consent for medical treatment or diagnostic tests abroad may only be granted prior to conducting such treatment or tests abroad.

His position is also reflected in the provisions of the Community law which are the legal basis for obtaining healthcare benefits in the territory of the European Economic Community, namely in the following Community regulations: Regulation (EEC) no. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed and self-employed persons and their families moving within the Community (*Official Journal of the EU* L.149, 5.7.1971 as amended) and in the Regulation (EEC) No.574/72 of the Council of 21 March 1972 determining the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed and self-employed persons and their families moving within the Community (*Official Journal of the EU* L.74 of 27 March 1972 as amended).

Pursuant to Art. 22 of the Regulation (EEC) No.1408/71 of the Council, a person entitled to benefits in kind is a person to whom consent has been granted by a competent institution to go to the territory of another Member State for the purpose of receiving medical treatment appropriate for his or her condition. Such consent may not be refused if the medical treatment is included among the healthcare benefits provided for in the legislation of the Member State in which the person resides and if he or she may not receive such treatment within the necessary time frame.

The insured party, by filing with the President of the National Health Fund on [...] August 2007 an application for medical treatment or diagnostic tests abroad undertook the correct steps aiming at receiving the consent for conducting treatment in N.

However, such consent could not be granted as, on [...] August 2007, prior to examination of the application, the insured person underwent the requested medical treatment against payment at the University Hospital in M.

The court concurs with the position expressed in the appealed decision, according to which conducting medical treatment before the application for the said treatment is examined constitutes a prerequisite for the proceedings to be discontinued on grounds of non-relevance.

The authority was correct in stating that conducting the medical treatment prior to receiving the decision of the President of the National Health Fund rendered non-existent factual circumstances which, under the norms of the substantive law (Art. 25(2) of the Act of 27 August 2004, § 8(1) of the Regulation of the Minister of Health of 27 December 2007 on applications for medical treatment or diagnostic tests abroad and reimbursement of costs of transportation), gave rise to the duty of the President of the Fund to issue a decision on the substantial content of the party's application.

In the case at issue, the content of the application initiating the proceedings simultaneously defines the category of the case which is the matter of proceedings.

The President of the National Health Fund was bound by the request of the application for conducting the medical treatment of the insured K.W. abroad.

Therefore, the authority could not change the qualification of the content of the party's request *ex officio* by considering the application for K.W.'s medical treatment abroad as an application for the reimbursement of incurred treatment costs.

The content of the application was also not modified in the course of the proceedings by the statutory representative of the minor K.W.

Considering the above, the Voivodship Administrative Court finds that the appealed decision did not violate the law and dismissed the complaint pursuant to Art. 151 of the Act of 30

August 2002 on Proceedings before Administrative Courts (*Dziennik Ustaw* No. 153, item 1270 as amended).