

Case C-543/03

Christine Dodl and Petra Oberhollenzer

v

Tiroler Gebietskrankenkasse

(Reference for a preliminary ruling from the Oberlandesgericht Innsbruck)

(Regulations (EEC) Nos 1408/71 and 574/72 — Family benefits — Child-raising allowance — Entitlement to benefits of the same kind in the Member State of employment and the Member State of residence)

Opinion of Advocate General Geelhoed delivered on 24 February 2005 I - 5052

Judgment of the Court (Grand Chamber), 7 June 2005 I - 5065

Summary of the Judgment

1. *Social security for migrant workers — Community legislation — Scope ratione personae — Worker within the meaning of Regulation No 1408/71 — Definition — Person insured under a social security scheme — Assessment by the national court (Council Regulation No 1408/71, Art. 1(a))*

2. *Social security for migrant workers — Family allowances — Community rules for prevention of overlapping benefits — Article 10(1)(a) of Regulation No 574/72 — Worker entitled to allowances for a family member in the State of employment and in the State of residence — Applicable legislation — Legislation of the Member State of employment (Council Regulation No 574/72, as amended by Regulation No 410/2002, Art. 10(1)(a))*
3. *Social security for migrant workers — Family allowances — Community rules for prevention of overlapping benefits — Article 10(1)(b)(i) of Regulation No 574/72 — Worker entitled to allowances in the State of employment for a child in respect of whom there is also a right to allowances in another Member State, the place of residence of the child and employment of the person having the care of the child — Suspension of the right to benefits in the State of employment up to the sum of the benefits paid in the State of residence (Council Regulation No 574/72, as amended by Regulation No 410/2002, Art. 10(1)(b)(i))*

1. A person has the status of an employed or self-employed person within the meaning of Regulation No 1408/71 where he is covered, even if only in respect of a single risk, on a compulsory or optional basis, by a general or special social security scheme mentioned in Article 1(a) of that regulation, irrespective of the existence of an employment relationship. It is for the national court to make the necessary enquiries to determine whether those entitled belong to a branch of the social security system and, accordingly, whether they are 'employed persons' within the meaning of Article 1(a) of that regulation.
2. Where the legislation of the Member State of employment and that of the Member State of residence of an employed person each provide for an entitlement to family benefits in respect of the same member of that person's family and for the same period, the Member State responsible for paying those benefits is, in principle, the Member State of employment pursuant to Article 10(1)(a) of Regulation No 574/72 fixing the procedure for implementing Regulation No 1408/71, as amended and updated by Regulation No 410/2002.

(see para. 34, operative part 1)

(see para. 64, operative part 2)

3. Notwithstanding Article 10(1)(a) of Regulation No 574/72 fixing the procedure for implementing Regulation No 1408/71, as amended and updated by Regulation No 410/2002, where a person having the care of children, in particular the spouse or partner of an employed person, carries out a professional or trade activity in the Member State of residence, the family benefits must be paid by that Member State in application of Article 10(1)(b)(i) of Regulation No 574/72, irrespective of

who is designated as directly entitled to those benefits by the legislation of that State. In that situation, the payment of family benefits by the Member State of employment is to be suspended up to the sum of family benefits provided for by the legislation of the Member State of residence.

(see para. 64, operative part 2)