

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
10 May 1994

Case T-512/93

Jacobus Stempels
v
Commission of the European Communities

(Officials – Request for prior authorization – None – Medical expenses –
Reimbursement – Exclusion)

Full text in French II - 437

Application for: Annulment of the Commission decision rejecting the applicant's
complaint directed against the non-reimbursement of the cost of
dental implants.

Decision: Application dismissed.

Abstract of the Judgment

By letter of 25 October 1989 the applicant's dentist sent the Commission information on fees concerning treatment which included the placing of dental implants. The applicant then sent the Commission a fee note of 14 October 1990

for treatment which was preparatory to the placing of implants and which the Commission agreed to reimburse.

On 19 October 1990 the Management Committee of the Joint Sickness Insurance Scheme of the Institutions of the European Communities decided that the cost of dental implants would no longer be reimbursed as from 1 January 1991. That decision in principle was not published in any way.

On 15 August 1991 the applicant underwent an explantation, the cost of which was reimbursed to him on 27 February 1992. A quotation for new dental implants was sent to the Commission on 20 December 1991.

On 29 November 1992 the applicant submitted a claim for reimbursement of the cost of an implantation which he had undergone on 31 March 1992. On 9 December 1992 the applicant was informed that the Commission had not received the quotation and that the costs of implants had ceased to be reimbursable as from 1 January 1991. The applicant subsequently sent the Commission a copy of the quotation in question.

In January 1993 the Commission sent the applicant a statement informing him that the sum of SFR 8 416.30 for his implants was not reimbursable, together with a letter stating, in particular, that the dental officer had given his opinion in favour of reimbursing the cost of fixed protheses *by way of exception*, notwithstanding the absence of a quotation.

Substance

The plea in law that the decision in principle of 19 October 1990 infringed Article 72 of the Staff Regulations and the principle of proportionality

The Court dismisses this plea as inapplicable. Since the applicant did not obtain prior authorization for the placing of new implants and did not enquire what steps

were being taken in response to his claim, he cannot blame the Commission for refusing reimbursement of the cost of his implants which was subject to a requirement of prior authorization. Moreover, he must have been aware that the absence of a reply by the institution to his request for authorization within the four-month period laid down by Article 90(1) of the Staff Regulations constituted an implied decision rejecting his request, against which a complaint might be lodged (paragraphs 24 and 25).

It is of no help to the applicant to claim that a request for prior authorization would in any event have been useless by reason of the existence of the decision in principle, since the latter is at most an internal directive which codifies the Commission's practice in making its decisions but from which it may depart having regard to the circumstances of an individual case. In those circumstances, the applicant should have enquired what steps were being taken in response to his request for authorization in order to discover whether, in his case, the Commission would stand by its internal directive or would, on the contrary, find specific reasons to depart from it. If the applicant disagreed with the decision on his request for prior authorization, legal remedies were open to him under Articles 90 and 91 of the Staff Regulations (paragraph 26).

The plea in law that the applicant's legitimate expectations were infringed in relation to his right to reimbursement of the cost of the implants

The Court rejects this plea because the only document which might have suggested to the Commission that the applicant would have implants placed is the fee note of 14 October 1990 and reimbursement of that fee note cannot have given rise to a legitimate expectation on the part of the applicant that the cost of the implants themselves would be reimbursed (paragraph 38).

Furthermore, in the absence of authorization for the implantation which took place on 31 March 1992, the information on fees of 25 October 1989 and the reimbursement of 27 February 1992 for the explantation which took place on 15 August 1991, which bear no relation to the claim for reimbursement at issue, cannot have given rise to any legitimate expectation on the part of the applicant that the implantation in question had been implicitly authorized and would be reimbursed (paragraph 39).

Nor, moreover, could the discretionary reimbursement of the cost of placing fixed protheses other than implants have given rise to legitimate expectation that the cost of treatment connected with the dental implants would be reimbursed (paragraph 41).

The plea in law that the duty of assistance was infringed

Since the applicant alleges that the Commission has neglected an elementary duty of assistance by not showing understanding towards him, the plea is in reality an appeal for clemency. As for that, it is not the function of the Court, even under its unlimited jurisdiction in financial matters, to order the Commission to show clemency or to show clemency itself in disregard of the law (paragraphs 45 and 46).

Operative part:

The application is dismissed.