

Judicial Summary

Child Benefit - Regulation (EC) No. 883/2004 - whether a step child is a child of the claimant for the purposes of Head (2) of the definition of "member of the family" in Article 1(i)

The claimant is a Polish national living and working in the UK since 2015. His wife lives in Poland with two children and receives family benefits. One child is the claimant's son. The other is his step son and spends every other weekend with his natural father. The claimant applied for child benefit. In respect of the claimant's step son, the Commissioners decided that he was not entitled to child benefit. The claimant appealed to the First-tier Tribunal (Ft-T). The Ft-T allowed the appeal and decided that the step son was one of the claimant's family members. The Commissioners appealed to the Upper Tribunal. The issue in the appeal is how Regulation 883/2004 applies, and in particular, how it applies to a step child.

Held, allowing the appeal, that:

1. a step child was not a "minor child" within the definition of "member of the family". Head (2) in Article 1(i) has to be read in the context of Article 67. Head (2) provides that "the spouse, minor children, and dependent children...shall be considered members of the family." That has to mean "the claimant's spouse, minor children, and dependent children." It cannot be read as "any minor children." In its proper, formal meaning, "child" does not include step children unless the description was qualified in some way to make the position clear; (paragraph 11 and 12)
2. if a step child is the claimant's child for the purposes of the claim, what about the position of the natural father? If he were to make a claim in respect of the child from another country, what would his position be? Would Head (2) mean that the child was not his child, despite his biological paternity? The Ft-T reasoning brought the step child within the claimant's claim, but it did not exclude him from a claim by his natural father. There is no basis in interpretation that would allow that result; (paragraph 14)
3. treating a step child as the claimant's child for the purposes of the claim would raise the possibility that he could be a member of two families in different States. In fact, he could be the member of more. Suppose his natural father has a spouse, his step mother, and she lives in a different State from both the step son and the natural father. That now makes him a member of three families in different States. As a child has two parents, this is always potential for the child to be a member of two families. But if step relationships are taken into account, the number of potential families multiplies and loses touch with reason; (paragraph 15)
4. including step children produces anomalous results. Why include a step child who is the natural child of the claimant's spouse, but exclude a child who is not a natural child of either the claimant or their spouse but is being brought up by them? (paragraph 16)

The Judge set aside the Ft-T decision and re-made the decision to the effect of confirming the Commissioners' decision.

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