

ENGLAND AND WALES / JUDGMENT

IM v Secretary of State for Work and Pensions

COURT
IN THE UPPER TRIBUNAL

DECIDED
October 2024
Liverpool Tribunal Centre
Decision 6 September 2024 : Statement of reasons issued on 26
DECISION

The decision of the Upper Tribunal is to

- (a) Grant permission to appeal
- (b) Dispense with the need for a substantive response by the Appellant .
- (c) Set aside the decision made in respect of both appeals by the First Tier Tribunal on 6 September 2024 .

IM v SSWP (AA: Competent authority)
Appeal no. UA-2025-000051-AA and UA – 2025-000080 – AA

- (d) Remake the decision which is that the UK is the competent state under the relevant Social Security Coordination Regulations (Regulation 883/04).
- (e) Order that the SSWP needs to consider the Appellant's entitlement to Attendance Allowance ("AA") on that basis.

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Appeal No. UA-2025-000080-AA and UA-2025-000051-AA

IN THE UPPER TRIBUNAL

ADMINISTRATIVE APPEALS CHAMBER

Between: MR IM
- v -
SECRETARY OF STATE FOR WORK AND PENSIONS
Appellant
Respondent
Before: Upper Tribunal Judge Scolding KC
Decided on consideration of the papers

Representation:

Appellant:

Respondent: BURY/BOLTON CITIZENS ADVICE BUREAU
SECRETARY OF STATE FOR WORK AND PENSIONS
First Tier Tribunal (Social Entitlement Chamber)

On appeal from :

Tribunal: Tribunal Case No: SC946/21/00263 and SC946/23/01669
Digital Case No.:

Tribunal Venue:

Decision Date: October 2024
Liverpool Tribunal Centre
Decision 6 September 2024 : Statement of reasons issued on 26
DECISION
The decision of the Upper Tribunal is to
(a) Grant permission to appeal
(b) Dispense with the need for a substantive response by the Appellant .
(c) Set aside the decision made in respect of both appeals by the First Tier Tribunal on 6 September 2024 .
IM v SSWP (AA: Competent authority)
Appeal no. UA-2025-000051-AA and UA – 2025-000080 – AA
(d) Remake the decision which is that the UK is the competent state under the relevant Social Security Coordination Regulations (Regulation 883/04).
(e) Order that the SSWP needs to consider the Appellant’s entitlement to Attendance Allowance (“AA”) on that basis.

REASONS FOR DECISION**Introduction**

1. This is an appeal to the Upper Tribunal about whether or not the Appellant – who I shall call IM in this decision – may be eligible for Attendance Allowance – “AA” in this decision. Factual background 2. 3. 4. IM is a gentleman of pensionable age. He arrived in Great Britain from Romania in 2017. He has settled status because of Appendix EU of the European Union Settlement Scheme and the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland and the European Union Atomic Energy Community – known usually as the “EU withdrawal agreement”. His age and his health have meant that his daughter, who I shall call MO, have periods of time off work and seek to claim Attendance Allowance on behalf of IM. IM receives a pension from the Romanian Government. Article 30(1) of the Withdrawal Agreement sets out who is covered by the withdrawal agreement. This includes union citizens who are subject to the legislation of the UK or who reside in the UK at the end of the transition period. Article 31 of the Withdrawal Agreement provides that the rules and objectives set out in Article 48 of the Treaty for the European Union and in particular the Regulation (EC) No 883/2004 shall apply to everyone covered by this part of the Withdrawal Agreement. Regulation 883/2004 are the social security co- ordination This therefore means that the relevant EU co-ordination arrangements as were in existence before the withdrawal of the UK from the EU apply to IM. 5. Regulation EC 883/2004 provides a framework to decide whether individuals who may reside in other EU countries

(and the UK if they have settled status) are entitled to claim benefits in their country of residence, or whether they have to claim benefits in the country where they previously resided or another EU IM v SSWP (AA: Competent authority) Appeal no. UA-2025-000051-AA and UA – 2025-000080 – AA country . Attendance allowance is seen as a sickness benefit under these Regulations. The Appeal to the First Tier Tribunal (FTT)

6. MO applied for attendance allowance for her father in 2000 and in 2022. On both occasions, the Secretary of State for Work and Pensions (“SSWP”) decided that IM was not entitled to AA because the UK was not the “competent EU” member state and so if he wanted to claim such allowances, then he would have to ask the Romanian Government to pay him the Romanian equivalent of attendance allowance because he did not qualify in English law for the allowance. 7. This is because Section 65(7) of the Social Security Contributions and Benefits Act 1992 read with section 5(2) of the Social Security (Disability Living Allowance, Attendance Allowance and Carers Allowance) (Miscellaneous Amendments) Regulation 2011 says that someone is only entitled to AA if the UK is the relevant body – known as the “competent authority” for the payment of cash sickness benefits. The Secretary of State did not make any further decisions about whether IM would meet the other criteria for the award of the allowance. 8. The First Tier Tribunal held a telephone hearing about IM’s appeals to the FTT on 6 September 2024. The FTT found that the UK was not the competent authority on the following basis : “16. It was common ground that [IM] was in receipt of a pension from Romania.
17. The Tribunal considered that pension credit would not constitute a pension for these purposes and as such [IM] did not and does not receive a pension from the UK
18. As a result of these findings, the Tribunal considers that the UK was not the competent state for the purposes of section 65(7) of the Social Security Contributions and Benefits Act 1992. Article 29 of Regulation EC 883/2004 provides that the state responsible for a person’s pension is the competent state. It is settled law that the state from which a claimant receives a pension is a competent state for the purposes of section 65(7).” The Appeal to the Upper Tribunal 9. IM appealed against this decision. Permission to appeal was refused by the First Tier Tribunal (“FTT”) on 12 December 2024. IM then appealed to the Upper Tribunal. No decision on permission to appeal was made as the Upper Tribunal stayed the case. It did so because the Secretary of State had sought IM v SSWP (AA: Competent authority) Appeal no. UA-2025-000051-AA and UA – 2025-000080 – AA to appeal another case – called SE v SSWP [2024] UKUT 405 (AAC) to the Court of Appeal . This case concerned who the competent state would be in respect of payment of cash sickness benefits in relation to pensioners and their family members.

10. The SSWP withdrew its appeal in SE in September 2025. As a result of this, the Upper Tribunal asked SSWP for submissions about IM's appeal. 11. The SSWP filed its submissions in December 2025. It submitted that because of the decision in SE (above), had the FTT had the benefit of the SE judgement, they would have found that the UK was the competent state by examining Article 11 of Reg 883/2004. I agree with these submissions.
12. SE decides that when determining which is the competent authority , one examines Article 11 of 883/2004. Article 11 says: "General rules
 1. Persons to whom this Regulation applies shall be subject to the legislation of a single member state only. Such legislation shall be determined in accordance with this Title. ...
 3. Subject to articles 12 to 16:
 - (a) a person pursuing an activity as an employed or self-employed person in a member state shall be subject to the legislation of that member state;
 - (b) a civil servant shall be subject to the legislation of the member state to which the administration employing him/her is subject;
 - (c) a person receiving unemployment benefits in accordance with article 65 under the legislation of the member state of residence shall be subject to the legislation of that member state;
 - (d) a person called up or recalled for service in the armed forces or for civilian service in a member state shall be subject to the legislation of that member state; (e) any other person to whom sub-paragraphs (a) to (d) do not apply shall be subject to the legislation of the member state of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other member states."
13. For the purposes of deciding which State is responsible for the benefits, the starting point is the state of applicable legislation under Article 11. The general rule under Article 11 of the Regulations (read with others) is that an economically inactive insured person (such as IM) is subject to the legislation in the country where he or she resides and therefore entitled to benefits – including attendance allowance which is a cash sickness benefit under Title III of the Regulations , i.e. to those benefits which exist in the country where the person resides. The regulations which the SSWP had relied upon by deciding that a pensioner and his family would not benefit from that general rule were held, in SE, to only be applicable where they are not entitled to be paid such benefits in the state at which they are resident. IM v SSWP (AA: Competent authority) Appeal no. UA-2025-000051-AA and UA – 2025-000080 – AA
14. The First Tier Tribunal reached the incorrect decision by considering that Regulation 29 applied to IM's situation. Whilst this was the position before SE, the case of SE (which followed a Court of Appeal decision called Harrington v SSWP [2023] EWCA Civ 443) found that Article 29 does not have the effect that the FTT considered that it did, and that in fact the Article was to be used where Article 11 did not apply , not as the general position.

15. Given this conclusion, it is possible that IM's family may qualify for attendance allowance if they meet the other conditions of entitlement of the benefit.
16. The SSWP accepts that the FTT decision was wrongly made. I considered whether to ask IM to make submissions but decided that as the position is clear, it was not necessary. I also considered if I needed to quash the decision but re- send it back to the FTT for a further decision. I consider that such is not necessary as there is only one answer that the FTT could give and so I substitute my decision for that of the FTT. 17. IM raised various grounds of appeal . I do not need to deal with them as my conclusion in respect of who is the competent authority disposes of this appeal.

Conclusion

18. Examining the facts of this case, the relevant competent authority is therefore the United Kingdom and not Romania for these purposes, following SE. The competent state under Article 11 (3) (e) would be the United Kingdom as the claimant resides in the UK. Fiona Scolding KC Judge of the Upper Tribunal Authorised by the Judge for issue on 16 December 2025 5

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/tna.dk5dymt8>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/im-v-secretary-of-state-for-work-and-pensions-2025>

Prepared on 22 October 2026 · Esheria