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In case no. 6275-21, the **Swedish Social Insurance Agency** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following judgment on 8 June 2023.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court amends the judgment of the administrative court of appeal such that the decision of the Swedish Social Insurance Agency is overturned in so far as it concerns allowance for the period commencing 1 August 2017.

BACKGROUND

1. Child allowance is a fundamental and general social insurance benefit which is provided for all children who reside in Sweden. As regards social insurance benefits, the starting point is that the person who wishes to receive the benefit must apply for it. However, as a general rule, this does not apply for child allowance but, rather, the allowance is paid out without an application. The existing exceptions are not relevant in this case.
2. AA, her husband and their two children reside in Sweden. The husband works for another EU Member State at that country's embassy in Sweden and is not covered by Swedish social insurance. The family moved to Sweden in 2014 and, in the following year, the Swedish Social Insurance Agency initiated an examination of AA's right to child allowance. In April 2018, the Swedish Social Insurance Agency decided that AA would receive child allowance commencing in August 2015 for one child and commencing in February 2017 for the other child.
3. AA requested that the decision be reconsidered and stated that she did not want to receive any child allowance. The reason for the request was that her husband received compensation for the children as part of his wages. That compensation

was higher than the child allowances, but was paid only on condition that she did not receive any allowance from Swedish authorities.

4. The Swedish Social Insurance Agency did not alter its decision and justified it on the basis that child allowance is a benefit that the entitled person cannot renounce. AA appealed to the Administrative Court in Stockholm which rejected the appeal.
5. AA appealed further to the Administrative Court of Appeal in Stockholm which granted the appeal and overturned the decision of the Swedish Social Insurance Agency. According to the administrative court of appeal, the construction of the legal text and case law provides support for the view that there is no obligation to receive payments of a benefit that you have not applied for and do not want. Furthermore, the court stated that AA, already when the decision was adopted, had declared that she wished to refrain from child allowance and had given reasons for it, and that she was subsequently consistent in her persistence. For this reason, and since there was no opposing interest, the court found that the decision of the Swedish Social Insurance Agency was to be overturned.

CLAIMS, ETC.

6. *The Swedish Social Insurance Agency* claims that the judgment of the administrative court of appeal is to be overturned and the decision of the Agency is to be affirmed.
7. AA agrees that the judgment of the administrative court of appeal should be amended in such a way that the Swedish Social Insurance Agency's decision regarding child allowance is overturned in so far as it pertains to the period commencing 1 August 2017, since it is for a period as from that date her husband will not receive any compensation for the children if she receives child allowance in Sweden.

REASONS FOR THE RULING

The question in the case

8. The question in the case is whether a person who is entitled to child allowance may refrain from receiving the allowance.

Legislation, etc.

9. Chapter 15 of the Social Insurance Code contains provisions regarding the entitlement to child allowance. The provisions regarding who receives the child allowance are found in Chapter 16.
10. Chapter 110 contains provisions regarding the handling of matters concerning social insurance benefits. Section 4, first paragraph states that a person who wishes to request a benefit shall apply therefor in writing. Section 6, first paragraph (1) provides, however, that the general rule is that there is no need for an application for child allowance.

The Court's assessment

11. The Swedish Social Insurance Agency has, without any prior application, decided that AA should receive child allowance for her two children. Had it – as is normally the case with social insurance benefits – been required that she applied for the benefit, she would have been able to refrain from applying for it. That possibility did not exist but, instead, she requested reconsideration of the decision.
12. The Swedish Social Insurance Agency asserts that the fact that no application is required in order to receive child allowance means that there is no right to refrain from the allowance.

13. Pursuant to Chapter 110, section 6, first paragraph (1) of the Social Insurance Code, child allowance is provided without a prior application by the person entitled thereto. According to the preparatory works, the reason why no application is required is that such requirement would give rise to unnecessary administration since, as a rule, there is no need for a more detailed investigation by the Swedish Social Insurance Agency in order to determine whether an allowance can be granted (Government Bill 2008/09:200, p. 551). The fact that no application is necessary thus has no connection to the possibility to refrain from disbursement of the allowance.
14. The Supreme Administrative Court finds that the mere lack of a requirement of an application does not deprive the person entitled to child allowance to refrain from disbursement of the allowance.
15. The Swedish Social Insurance Agency also asserts that the fact that there is no regulation regarding a right to refrain from the child allowance suggests that no such right exists and adds that the other parent's right to child allowance can otherwise be affected.
16. A request that child allowance not be disbursed does not affect the statutory right to child allowance. That right remains even if one parent refrains from the right to receive disbursement of the allowance. This also means that someone else's right to child allowance is not affected.
17. In summary, the Supreme Administrative Court finds that the Swedish Social Insurance Agency had no support for not complying with AA's request that child allowance not be disbursed. As found by the administrative court of appeal, the Swedish Social Insurance Agency should therefore have overturned its previous decision.
18. AA has consented in the Supreme Administrative Court to the disbursement of child allowance during the period up to and including 31 July 2017. Accordingly,

the Supreme Administrative Court finds that the judgment of the administrative court of appeal shall be amended to the extent that the decision of the Swedish Social Insurance Agency is overturned in so far as it concerns allowance for the period commencing 1 August 2017.

Justices Helena Jäderblom, Per Classon, Inga-Lill Askersjö, Mats Anderson and Magnus Medin have participated in the ruling.

Judge Referee: Hannah Ivarsson.