

Reimbursement for medicine not listed in Reimbursement Code?

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Introduction

In the medical treatment field, scientifically recognised conventional methods of treatment are preferred over alternative methods.

The reimbursement of costs for alternative treatment not recognised by science is granted only if the complementary medical treatment corresponds to a suitable medical treatment and does not exceed the necessary extent.

If an insured does not react positively to a medicine listed in the Reimbursement Code but further methods of treatment have not yet been tried, the administration of an alternative medicine is not indispensable or inevitable.

Facts

The plaintiff had been receiving psychiatric treatment since the age of 15. From 2009 he was treated with various antidepressants listed in the Reimbursement Code. The plaintiff occasionally showed improvements in his condition; however, significant adverse changes also occurred. There was no exhaustive treatment with the medicines listed in the Reimbursement Code, so further methods of treatment thereunder were still available.

In the second quarter of 2014, a psychiatrist prescribed the medicine Dronabinol, which is not listed in the Reimbursement Code. Dronabinol is a mood-elevating, sedative, relaxing, anxiolytic and analgesic medication. It can be helpful for depression, but not always, as the medication's effects vary depending on the individual. Dronabinol can have similar effects to cannabis-based drugs.

Following the administration of Dronabinol, the plaintiff's general condition improved. From a subjective point of view, the plaintiff suffered no adverse effects, so treatment with Dronabinol was medically useful.

Decisions

On 4 April 2016 the Organisation of Austrian Social Security refused to reimburse the cost of Dronabinol. All three instances confirmed this decision. In its decision of 17 December 2019, **(1)** the Supreme Court drew on longstanding precedents and ruled that if a condition can be treated by conventional medicine, there is no reason to finance "outsider methods" in the sense of complementary or alternative treatment. **(2)** A cost reimbursement is not excluded for alternative (outsider) methods of treatment. However, it is limited to exceptional cases and granted only if a complementary method of treatment corresponds to a useful treatment and is not in excess of the necessary extent. This implies that an appropriate and promising treatment under acknowledged rules of medical science was unavailable or was tried in vain, whereas the 'outsider method' was successful or seemed to be promising *ex ante*. If conventional methods of treatment were applied (or could have been applied) without adverse effects, there would be no reason for the Organisation of Austrian Social Security to reimburse the cost of alternative treatments. In such a case, it does not matter how high the cost of the outsider treatment is in comparison to conventional treatment. **(3)** The Organisation of Austrian Social Security has previously refused to reimburse complementary treatment if conventional methods were deemed to have been successful because the necessary extent had been exceeded. In order to claim cost reimbursement for a complementary treatment, it is insufficient if only one of several conventional methods has been applied.

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According to the established facts in the case at hand, scientifically acknowledged methods of treatment had not been exhausted. The lower-instance courts considered the plaintiff's situation by addressing the possible effects (success and adverse effects) of conventional treatment and alternative treatment (both from an objective and subjective point of view). The significant adverse effects of conventional treatment were not objectively verifiable in respect of (conventional) medicines administered nor was it certain that the plaintiff would have experienced such adverse effects if conventional methods of treatment were continued. Although the plaintiff subjectively believed that Dronabinol had had no adverse effects on him, it could not be established if the conditions that the plaintiff suffered in 2016 (following the administration of Dronabinol) were symptoms of his primary disease or adverse effects of Dronabinol (which occur frequently).

Therefore, the plaintiff could not prove that the prescription of Dronabinol was indispensable or inevitable. The plaintiff's disapproval of the conventional methods of treatment and his assumption that these methods were unpromising and therefore unreasonable could not justify a claim for cost reimbursement.

Comment

Although Austrian social security provides for a legal entitlement to benefits in kind (ie, free administration of medicines listed in the Reimbursement Code, except for a small prescription fee), the Organisation of Austrian Social Security is reluctant to reimburse the cost of medicines not listed in the code. This restrictive approach is supported by the Austrian courts.

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Endnotes

(1) 10 ObS 149/19p.

(2) Supreme Court, 23 April 2014, 10 ObS 26/14t.

(3) Supreme Court, 9 April 1996, 10 ObS 20/95.

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