

GETTING SECTION 4 SUPPORT ON MEDICAL GROUNDS: INABILITY TO FLY

Section 4 Support

Section 4 support is available to failed asylum seekers who meet strict criteria listed in *Regulation 3(2) of the Asylum Support (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005*. A failed asylum seeker must be destitute and then meet one of the 5 criteria listed in *Regulation 3(2)(a-e)*.

Regulation 3(2)(b)

One of the ways in which a person can qualify for support is if they are ill and unable to travel. Regulation 3(2)(b) says that a person can qualify for Section 4 support if they are “unable to leave the UK due to a physical impediment to travel or for another medical reason”.

The Asylum Support Tribunal (AST) (the tribunal which hears appeals against the refusal or withdrawal of support) have interpreted what this means in various ways in deciding whether a person’s medical problems prevent them from travelling home. NASS Policy Bulletin 71 explains the policy concerning Section 4 support and in regards to Regulation 3(2)(b) says that a person will meet this criteria if they have medical evidence that shows they are “unfit” to travel.

However, a recent Judicial Review has confirmed how a person qualifies for Section 4 support due to medical problems. The following points summarise the approach the Home Office and the AST should now take.

- The person must be unable to leave the UK. This does not mean “unfair” or “unreasonable” it simply means that the person is not able to leave the UK. The court held it was wrong to say whether a person was “unfit” to travel. This is different to the position that the Home Office take in Bulletin 71.
- If the person concerned is not able to leave the UK then it should be considered why that person is unable to leave the UK. That person can argue that they cannot leave the UK because of a physical impediment to travel (for example they are heavily pregnant) or for some other medical reason (for example this could include mental health problems).

How to Apply For Section 4 Support on Medical Grounds

If a person wants to apply for Section 4 support on the grounds that they are unable to leave the UK they will need to get medical evidence to support this. This evidence can be obtained from GPs, consultants, psychiatrists, etc. Advisers who are writing to medical practitioners should ask for the following information to be provided in writing (these examples only):

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12/04/07

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Evidence

The information contained in this factsheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact ASAP.

1) It is important that the practitioner states their name, qualifications and their involvement with the person applying for support. This will demonstrate that the person has assessed the person and is therefore able to decide whether they are able to travel.

2) Details of the person's medical problems (physical or psychiatric).

3) Whether these problems mean the person is unable to travel. This means whether the person is able to get on plane. It is not enough to say that it is desirable that the person remains in the UK or that they need treatment. If a person is unable to travel this should be stated clearly: for example; "This person is unable to travel at this point because....".

4) Details of how long the person is likely to be unable to travel.

This information should be included with the application for support. BIA have their own medical officer who will decide whether the person is unable to travel. The medical officer may disagree with the medical evidence that has been provided. In those cases an appeal should be made to the Asylum Support Tribunal.

For more information and factsheets, visit www.asaproject.org.uk

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ASAP Factsheets:

No 1: Asylum Support

No 2: Section 4 Support for Failed Asylum Seekers

No 3: What to Bring to the AST

No 4: Proving Destitution

No 5: After a Negative Decision at the AST

No 6: Section 9 Withdrawal of Support for Failed Asylum Seeker Families

No 7: Introduction to Community Care

No 8: Introduction to Judicial Review

No 9: The European Convention on Human Rights and The Human Rights Act 1998

No 10: Medical Briefing

No 11: Section 4 Breach of Conditions

No 12: Section 4: New Ways to Apply