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Dr Sarah Wollaston MP
Chair
Health and Social Care Committee
House of Commons
London
SW1A 0AA

26 JUN 2018

Dear Sirs,

Thank you for your letter of 4 April 2018 regarding the case of Mr Albert Thompson. I appreciate your concerns and am grateful that you are taking the time to raise this matter with me. As you are aware, neither ministers nor the Department can comment on individual cases therefore I will be responding in general terms, and I apologise for the delay in doing so.

You will be aware that the UK has a residence based healthcare system, meaning that entitlement to free NHS-funded hospital treatment is principally based on being ‘ordinarily resident’ in the UK at the time of treatment. It is not linked or dependent on the past or present payment of UK taxes or national insurance contributions, nor is it based on nationality. Being ‘ordinarily resident’ means, broadly, living in the UK on a lawful and properly settled basis for the time being. Except in rare circumstances, nationals of countries outside of the European Economic Area (EEA) must also have ‘indefinite leave to remain’ in the UK in order to be ordinarily resident here.

A person not ordinarily resident in the UK is an ‘overseas visitor’ for the purposes of the National Health Service (Charges to Overseas Visitors) Regulations (the ‘Charging Regulations’). Whether a person is ordinarily resident is a question of fact for which a number of factors are taken into account, and providers of NHS funded secondary care should consider all the specific circumstances of each individual case.

It is important to note that since 1982 there has been a legal duty on providers of NHS funded secondary care to establish whether an overseas visitor is exempt from charges under one of a number of exemption categories, or liable for charges and, if so, to recover the charge from them. However, where treatment is considered to be
immediately necessary in order to save a patient’s life or prevent their condition from becoming life-threatening, treatment must not be delayed or withheld in order to establish if they should pay. The decision on whether treatment is urgent or immediately necessary will always be made by a clinician and on a case by case basis.

The Government has made clear that those who arrived in the UK from Commonwealth countries before 1973 are deemed to have settled status and are, therefore, entitled to free NHS treatment as they are ordinarily resident. Those who arrived in the UK after 1973 are likely not to have deemed status, and we have strongly encouraged this cohort of patients, like Mr Thompson, who have lived in the United Kingdom for a long period but who may not feel they have the right documentation confirming they have permission to live here, to seek advice from the Home Office and submit an appropriate application to them as soon as possible.

In all cases, the decision on whether someone is ordinarily resident, or exempt from charges, or chargeable, lies with the NHS body providing treatment. They must make that decision based on the evidence provided by the patient and in accordance with the charging regulations.

I hope this reply is helpful.

Jeremy Hunt