

May 2011

Maternity rights and benefits: refused (failed) asylum seekers

This is one of a series of information sheets which provide a guide to maternity rights and benefits for pregnant women and new mothers according to their immigration status. This information sheet covers:

- Employment-related maternity rights
- Benefits and tax credits
- Healthcare

Other information sheets cover rights and benefits for asylum seekers, refugees, undocumented migrants, EU and EEA nationals (including A8 and A2), women with no recourse to public funds, trafficked women and UK citizens and permanent residents.

Immigration status

A 'refused' or 'failed' asylum seeker is someone whose claim for asylum has been refused and any subsequent appeals have been unsuccessful. Unsuccessful asylum seekers are often referred to as 'appeals rights exhausted (ARE)'. The UK Government expects refused asylum seekers to leave the country.

Employment rights

On 28 July 2010, the Supreme Court decided that failed asylum seekers who have made a fresh claim for asylum, which has been outstanding for 12 months or more, will now be entitled to apply for permission to work.

Benefits and tax credits

Refused asylum seekers are not entitled to benefits but may qualify for some support from the UK Border Agency (UKBA).

Asylum support from the UKBA ends 21 days after an application for asylum has been refused. If an appeal is made on time the UKBA will continue support until a final decision is made. UKBA support will end 10 days after a decision is made or 21 days after the final appeal decision. If the asylum seeker has dependent children under the age of 18, asylum support should continue until the child reaches 18 or the asylum seeker leaves the country.

Refused asylum seekers may be able to receive support under section 4 of the Immigration and Asylum Act 1999. Section 4 support consists of accommodation and pre-paid Azure card, currently worth £35.59 per week for food and essential toiletries, and is provided by the UKBA to asylum seekers who have exhausted all their appeal rights and are destitute.

Women in receipt of section 4 support are entitled to claim an additional £3 per week

during pregnancy and can claim £250 from eight weeks before the baby is due, until six weeks after the birth. Parents can claim an additional £5 per week for children under one year, £3 per week for children over one year and under three years, and £5 for clothing for each child. This additional support will usually be credited to the mother's section 4 Azure card. Section 4 recipients can claim travel costs, telephone costs, stationery and postage in relation to healthcare appointments.

To apply for section 4 support claimants must show that they are destitute and that they have taken reasonable steps to leave the country; or that they are destitute and have been unable to leave the country because of physical or medical reasons. Women in 'the late stages of pregnancy' or who have some pregnancy-related complication which would render them unfit for travel are accepted as having a physical or medical reason for being unable to leave the country.

To claim section 4 support based on medical reasons, pregnant women must provide evidence that they are destitute, such as a letter from a solicitor, midwife or friend. In addition, they must provide a MAT B1 certificate or, if they are claiming pregnancy-related complications, a letter from a health practitioner stating that they are unfit to travel. For women with an uncomplicated pregnancy, UKBA will ordinarily provide section 4 support for the six weeks before the expected date of delivery until six weeks after the birth. This claim should be submitted several weeks before the section 4 support is expected to commence to allow time for the UKBA to process the claim.

Refused asylum seekers who have special needs, are pregnant or who have children can apply to their local authority for support. Local authorities have a duty to provide accommodation, food and essential toiletries for refused asylum seekers who require care because of age, illness or disability which has not arisen solely because of destitution. Refused asylum seekers may be excluded

from local authority support if they have been certified by the Secretary of State as having failed to leave voluntarily, failed to comply with removal directions or who applied for asylum in-country rather than at port of entry, however, support must be provided if it is required to avoid a breach of their rights under the European Convention.

Local authorities have a duty to conduct a Community Care Assessment where a person needs care because of physical disability or mental health needs. The CCA must be conducted within 28 days. If care is necessary, the local authority should provide accommodation and support. This should be provided while the CCA is pending if the person's condition requires support urgently.

In some circumstances, local authorities can provide funds for travel to the asylum seeker's country of origin.

Refused asylum seekers should seek help from the organisations listed below to apply for local authority support. Local authorities are obliged to inform the UKBA if a refused asylum seeker applies for support.

Travel expenses

Support is available to enable refused asylum seekers who receive section 4 support to travel to meet reporting requirements where a person has to travel more than three miles. An asylum seeker who is unable to travel that distance, for example, in the later stages of pregnancy, can apply to the UKBA to reduce the frequency of reporting or to report to a local police station. A person receiving section 4 accommodation can ask to be moved nearer to the reporting centre by writing to their reporting centre.

Maternity care and other healthcare

Maternity care

Refused asylum seekers are entitled to access NHS maternity care but may be asked to pay for care. NHS guidance states that maternity care is 'immediately necessary' care and must not be withheld

because the woman is unable to pay in advance. Maternity care includes antenatal care, birth and postnatal care and includes HIV treatment during pregnancy. This is not widely understood and the woman may need to insist that the maternity service follows the NHS guidelines. For more information, see [Entitlement to free NHS maternity care for women from abroad](#).

When attending for maternity care (or for other forms of healthcare), a woman may be asked whether she has a legal right to be in the country and how long she has lived in the UK. Some maternity services ask women to show their passport however this is not universal.

If you are unable to pay for your maternity care, then you should inform the trust. Ideally, this should be done in writing. The Department of Health advice states that hospital trusts have a duty to recover charges but should not go beyond what is reasonable when pursuing charges. If the trust or a debt collector is aggressively pursuing payment, then you can make a formal complaint to the trust.

Secondary care

Secondary care includes care provided in hospitals and by specialists. Refused asylum seekers may be asked to pay for secondary care. Care which is considered to be 'immediately necessary' treatment or 'urgent' treatment must be provided without delay whether or not the woman is able to pay. Care which is considered 'non-urgent' can be refused if the woman is unable to pay in advance. Only clinicians can decide on the urgency of treatment.

GP and other primary care

Department of Health guidance states that GPs have the discretion to register refused asylum seekers, but are not required to do so.

Exceptions

Refused asylum seekers are entitled to free NHS care for: compulsory mental health treatment, testing (but not treatment) for HIV/AIDS, treatment for communicable disease including TB and sexually transmitted infections (except for HIV/AIDS),

emergency care provided in Accident and Emergency.

Family members who are not asylum seekers

In some circumstances, where a couple have different immigration status, a spouse or partner of an asylum seeker, who is not subject to immigration control, may be able to continue to claim benefits to which they are entitled, see the asylum seeker information sheet.

If the asylum seeker's application has failed, the refused asylum seeker is subject to immigration control and should have no recourse to public funds. Benefits considered to be public funds include, amongst others, Child Benefit, Child Tax Credit, Working Tax Credit, Council Tax Benefit, Housing Benefit, Income Support, Income-based JSA and Social Fund payments including the Sure Start Maternity Grant. Their spouse or partner should seek advice about claiming benefits from the organisations listed below.

Useful contacts

Maternity Action

www.maternityaction.org.uk

Advice on maternity benefits and rights at work for UK citizens and women from abroad – 0845 600 8533

Asylum Support Appeals Project

www.asaproject.org.uk

Advice on asylum support appeals – 020 7729 3042 – 2-4pm.

UK Border Agency

www.ukba.homeoffice.gov.uk

Immigration enquiry bureau - 0870 606 7766
Asylum support customer contact centre - 0845 602 1739

Child Poverty Action Group

www.cpag.org.uk

Advice on benefits and tax credits.
For advisors only - 020 7833 4627, any weekday from 2-4pm.

Citizen's Advice Bureau

www.adviceguide.org.uk

General help and advice. You can find your nearest CAB in the phone book.

Community Legal Advice

www.communitylegaladvice.org.uk

Immigration advice and access to a legal adviser in your area 0845 345 4345

Family Rights Group

www.frg.org.uk

Advice on local authority support for families – 0808 801 0366 10 am – 3.30 pm weekdays.

No recourse to public funds network

www.islington.gov.uk/community/equalitydiversity/refugees_migrants/nrpf_network/default.asp

Information on local authority support for people subject to immigration control. Contact Islington, 222 Upper Street, London N1 1XR. Tel: 020 7527 2000

Project London

www.doctorsoftheworld.org.uk/projectlondon

Free and confidential help to access healthcare – 020 8123 6614, 020 7613 4106 Monday/Wednesday/Friday 1.00-6.00pm

Refugee Council

www.refugeecouncil.org.uk

Information and assistance for refugees and asylum seekers.

Head Office - 020 7346 6700

London Advice Line - 020 7346 6777

East of England – 01473 297 900

West Midlands – 0808 808 2255

Yorkshire and Humber – 0113 386 2210

Rights of Women

www.rightsofwomen.org.uk

Free legal advice on immigration, asylum issues, trafficking and sexual violence.

Helpline 020 7490 7689

More Maternity Action information sheets

[Maternity rights and benefits: asylum seekers](#)

[Maternity rights and benefits: refugees](#)

[Maternity rights and benefits: no recourse to public funds](#)

[Maternity rights and benefits: undocumented migrants](#)

[Maternity rights and benefits: EU, EEA and Swiss nationals \(including A8 and A2\)](#)

[Maternity rights and benefits: indefinite leave, right of abode and British citizenship](#)

[Maternity rights and benefits: trafficked women](#)

[Maternity rights and benefits: which information sheet to use](#)

[Pregnancy and maternity rights for Polish workers \(English language\)](#)

[Pregnancy and maternity rights for Polish workers \(Polish language\)](#)

[Rights at work for fathers and partners- Polish workers \(English language\)](#)

[Rights at work for fathers and partners – Polish workers \(Polish language\)](#)

[Entitlement to free NHS maternity care for women from abroad](#)

[Your rights at work](#) – a series of information sheets about your rights in the workplace

Available at www.maternityaction.org.uk

This information sheet was produced in May 2011. It is important to get up-to-date advice.