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Resident nurse at one hospital maintained by a public authority entered on 5 3 48, another hospital, maintained by the same authority. Claimant's contention that treatment was not free because she had always been entitled to it under her contract of service and it was thus part of her emoluments, not accepted

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1. My decision is that as from and including the 5th July, 1948, the claimant was not entitled to be paid sickness benefit at a higher weekly rate than 16s.

2. The claimant was employed as a resident nurse at a hospital maintained by a public authority. On the 5th March, 1948, she entered another hospital maintained by the same authority (hereafter called " the second hospital ") in order to receive treatment as an in-patient for tuberculosis. She was discharged from the second hospital on the 14th October, 1948. The Insurance Officer decided that, by virtue of Regulation 9 of the National Insurance (Overlapping Benefits) Provisional Regulations, 1948 [S.I. 1948 No. 1244], as from the 5th July, 1948, sickness benefit was payable to the claimant at the reduced weekly rate of 16s. on the ground that she had received continuously free in-patient treatment for a period exceeding 56 days, but not exceeding 420 days. At the hearing of the claimant's appeal to the Local Tribunal her association submitted (1) that the treatment received by the claimant was not free in-patient treatment since she was entitled to it under her contract of service and it was thus part of her emoluments. It was further contended (2) that the treatment she had received had always been free and was not given in pursuance of the National Insurance Act, 1946, and (3) that in any event the 56 days should not begin to run until the 5th July, 1948, when the National Insurance Act came into operation. (This third contention was rightly abandoned by counsel at the hearing before me in view of Decision C.S. 44/48 (K.L.).) The Local Tribunal accepted the submission that the treatment was not free and allowed the claimant's appeal.

3. The crucial portions of the regulation are also as follows :—

" (6) In this regulation :—

(a) the expression " free in-patient treatment " means, in relation to any person, medical or other treatment as an in-patient in a hospital or similar institution in which, during the period of that treatment, that person is or has been maintained free of charge.

(b) . . . . .

(7) A person who, for the purpose of receiving medical treatment as an in-patient, avails himself of the hospital services provided under Part II of the National Health Service Act, 1946 . . . shall only be regarded as not being maintained free of charge if he is paying or has paid, in respect of his maintenance, charges which are designed to cover the whole cost of the accommodation and services (other than services by way of treatment) provided for that person as part of the said hospital services " .

4. It will be observed that the regulation places upon the claimant the burden of proving that she was paying the specified charges.

5. It appears that under the claimant's contract of service the value of her board and lodging was assessed at £100 per annum and this sum was treated as part of her emoluments for pension purposes. If she had been receiving medical treatment at her own home she would have been entitled under the regulations incorporated in her contract to an allowance of £1 a week while on full pay and 10s. a week while on half-pay. As she was a resident nurse and in receipt of board and lodging as part of her emoluments she was entitled under her contract to free maintenance as well as free treatment at the hospital. On the other hand, the authority's regulations provide that staff in receipt of non-residential allowances should pay a charge in respect of board and lodging while receiving free in-patient treatment. I will assume (without deciding the point) that the claimant's rights under this contract were unaffected by the coming into force of the National Health Service Act, 1946.

6. To succeed in her claim the claimant must show that in respect of the maintenance in the hospital :—

(a) she paid charges and

(b) those charges were designed to cover the whole cost of her accommodation and services provided for her while in hospital (other than services by way of treatment)

No sum of money was demanded from or paid by the claimant or any other body or person in respect of the claimant's maintenance in hospital and it has now been ascertained that no entry has been made in the accounts of the second hospital purporting to debit any authority or fund with a charge, or to credit them with a payment in respect of the claimant's maintenance or treatment while at the second hospital. It appears, moreover, that, as stated by the representative of the claimant's association before the Local Tribunal, even before the appointed day the claimant, as a tuberculosis patient, would have been entitled to free treatment and maintenance while in hospital as a member of the public under a government scheme

7. In these circumstances it cannot in my opinion be said that the claimant has discharged the burden of proof which rests upon her. She made no payment herself, but it is not necessary to decide whether this fact would have been fatal to her claim even if it could have been shown that her employers had paid the charges to the second hospital in consideration of the claimant's services and in fulfilment of their obligations under her contract of service. For it is clear that no charges were made by the second hospital and no sums debited to or paid by the claimant or any body or person in respect of the claimant's maintenance while in the second hospital. All that can be said is that, in consideration of her services, the claimant's employers were bound to and did provide her with treatment and maintenance for which no charge was made to anyone. It is impossible to hold that the fact that the claimant had procured the right to this treatment and maintenance by her services constituted a "payment" by the claimant "of charges designed to cover the whole cost of the accommodation and services (other than services by way of treatment) provided for that person as part of the said hospital services".

8. The appeal is allowed.

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